

8-21-92  
Vol. 57 No. 163  
Pages 37869-38236

Friday  
August 21, 1992

# Federal Register

Briefing on How To Use the Federal Register  
For information on a briefing in Atlanta, GA, see  
announcement on the inside cover of this issue.





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### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### ATLANTA, GA

- WHEN:** September 17, at 9:00 a.m.
- WHERE:** Centers for Disease Control  
1600 Clinton Rd., NE.  
Auditorium A  
Atlanta, GA (Parking available)
- RESERVATIONS:** [404-639-3528 (Atlanta area)]  
1-800-347-1997 (outside Atlanta area)



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# Rules and Regulations

Federal Register

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 92-008-2]

#### Tuberculosis in Cattle and Bison; State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Tennessee from a modified accredited State to an accredited-free State. We have determined that Tennessee meets the criteria for designation as an accredited free State.

**EFFECTIVE DATE:** September 21, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective and published in the **Federal Register** on May 12, 1992 (57 FR 20193-20194, Docket No. 92-008), we amended the tuberculosis regulations in 9 CFR part 77 by removing Tennessee from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before July 13, 1992. We did not receive any comments. The facts presented in the

interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12291, 12372, and 12778, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

#### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

#### PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 57 FR 20193-20194 on May 12, 1992.

**Authority:** 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 17th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20023 Filed 8-20-92; 8:45 am]

BILLING CODE 3410-34-M

### Food Safety and Inspection Service

#### 9 CFR Parts 318 and 381

[Docket No. 88-033F]

RIN 0583-AA95

#### Finished Product Inspection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to allow canning establishments more flexibility in complying with the regulatory requirements concerning finished product inspection of thermally-processed, shelf stable canned product. The existing regulations allow establishments to use quality control programs to ensure compliance with the regulations; however, establishments

must comply with all of the specific regulatory provisions regarding finished product inspection. In response to two petitions for specific changes to the finished product inspection regulations, the Agency has determined that establishments will be allowed to develop quality control programs containing performance standards that are different from, but equally effective as, the specific regulatory provisions for finished product inspection.

**DATES:** This rule is effective September 21, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720-3840.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

The Agency has determined that this final rule is not a "major rule" within the scope of E.O. 12291. It will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

##### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. State and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to operations of any establishment at which inspection is provided under the FMIA or PPIA, or any packaging or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of



preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and the PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA or PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule will not have retroactive effect. Prior to any judicial challenge to the provision of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, the administrative procedures are set forth in §§ 306.5 and 318.4(g) of the Federal meat inspection regulations (9 CFR 306.5 and 318.4(g)), and §§ 381.31 and 381.145(g) of the poultry products inspection regulations (9 CFR 381.31 and 381.145(g)).

#### Effect on Small Entities

The Administrator has made a determination that this final rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Finished product inspections are conducted in accordance with §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. All canners of thermally-processed, shelf stable meat and poultry products, therefore, have operating costs related to the requirements of these sections of the regulations. The final rule will provide establishments with increased flexibility in developing performance standards different from, but equally effective as, the standards found in §§ 318.309(d) and 381.309(d).

Establishments choosing to continue complying with the existing regulations will not be affected by this final rule. Establishments voluntarily choosing to create different quality control programs would have to provide for at least the same level of assurance as that of the requirements in §§ 318.309(d) and 381.309(d) of the meat and poultry products inspection regulations. However, it is expected that such a voluntary quality control program would not be considered unless the establishment determines it is a more cost-effective procedure than previously existed.

#### Paperwork Requirements

Under this final rule, quality control programs may contain provisions that differ from the specific regulatory requirements if they are determined to offer the same level of assurance as those requirements which provide for the safety and stability of canned products. Currently, quality control programs must comply with the requirements of §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. The final rule requires establishments voluntarily choosing to develop a quality control program containing performance standards that are different from, but equally effective as, the requirements for finished product inspection, to submit quality control program plans to the Administrator for approval in accordance with §§ 318.4(c) and (d) and 381.145(c) and (d) of the regulations. Establishments may develop a quality control program to address all or some of the requirements of §§ 318.309 and 381.309 of the current finished product inspection regulations. All of the above-referenced reporting requirements have been approved by the Office of Management and Budget under control number 0583-0015.

#### Background

##### Current Regulations

The examination of finished thermally-processed, shelf stable canned product is conducted in accordance with § 318.309 of the Federal meat inspection regulations and § 381.309 of the Federal poultry product inspection regulations (9 CFR 318.309 and 381.309). These two sections are intended to increase the level of assurance that canned products are safe and unadulterated. As such, they include provisions covering incubation test procedures, monitoring container condition, and shipping.

The regulations allow establishments to address many of the requirements found in §§ 318.309 and 381.309 by the application of an Agency-approved quality control program. In lieu of a quality control program, however, establishments must comply with all of the provisions contained in §§ 318.309 and 381.309.

Moreover, an establishment, whether or not it has a quality control program, must comply with all of the following specific requirements: (1) From each load of product processed in a batch-type thermal processing system, an establishment must select at least one container for incubation. In continuous-type thermal processing systems, the sampling rate for incubation testing is at

least one container per 1,000; (2) Sample containers must be incubated for not less than 10 days (240 hours) at  $95 \pm 5$  F ( $35 \pm 2.8$  C). The finding of abnormal containers (as defined in paragraph (a) of §§ 318.309 and 381.309) among incubation samples is cause to officially retain at least the code lot (as defined in paragraph (f) of §§ 318.309 and 381.309) involved; (3) When abnormal containers are detected by means other than incubation, the affected code lots cannot be shipped until the Agency has determined that the product is safe and stable, meaning that the product was not contaminated or adulterated during processing and the product remains wholesome; (4) Establishments cannot ship canned product before the end of the required 10-day incubation period unless they have approval, in writing, from the area supervisor of an establishment's procedures for preventing the shipped product from reaching the retail level of distribution before sample incubation is completed. The procedures must assure, also, that the product could be returned to the establishment promptly should such action be deemed necessary due to the incubation test results.

#### NFPA Petitions

In May of 1988, the Agency received two petitions from the National Food Processors Association (NFPA) to amend the Federal meat and poultry products inspection regulations to allow canning establishments more latitude in complying with the specific requirements contained in §§ 318.309 and 381.309 (9 CFR 318.309, 381.309) of the Federal meat and poultry products inspection regulations.

One of two petitions from the NFPA requested revisions to the regulations that would permit establishments to ship product to retail outlets before the completion of incubation, provided that they operate under an approved quality control program that exceeds certain elements of existing regulations. As an example, it suggested an augmented incubation program and development of a program for evaluating process deviations and the significance of abnormal containers found during incubation.

The second petition from the NFPA requested that §§ 318.309(d)(1)(iv)(b) and 381.309(d)(1)(iv)(b) of the meat and poultry products inspection regulations (incubation sampling frequency for continuous-type thermal processing systems) be revised " \* \* \* to provide greater equality with the required minimum sampling rates for batch-type processing systems." The petitioner



suggested that at least one container be drawn for incubation sampling at time intervals not to exceed the process time for the product. For example, if a particular product/container has a process schedule of 25 minutes at 250 F, then at least one incubation sample would be selected every 25 minutes. However, because some systems operate at a very high volume (e.g., several hundred containers/minute), the NFPA suggested a minimum sampling rate of at least one container for every 20,000 processed.

#### *Proposed Rule*

FSIS determined that the NFPA presented a logical argument for allowing establishments to ship finished product to the retail level before the end of the 10-day incubation period. In addition, the Agency viewed the NFPA petition concerning a modification of the incubation sampling frequency for containers processed in continuous-type thermal processing systems to be reasonable and practical.

Accordingly, on September 24, 1991, FSIS published a proposed rule in the *Federal Register* (56 FR 48131) to amend §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. Both NFPA petitions were addressed in the published proposal. However, rather than proposing to revise the current requirements for incubation sampling frequency and developing quality control requirements specifically for shipment of product before the end of the 10-day incubation period as requested by the petitioner, the Agency proposed to provide establishments the option to develop quality control programs containing performance standards that are different, but no less effective, than current requirements. The proposed rulemaking would allow the use of FSIS-approved quality control programs that vary from the specific requirements in §§ 318.309(d) and 381.309(d) of the regulations. However, a quality control program would have to provide for at least the same level of assurance as the existing requirements of §§ 318.309 and 381.309 which are designed to ensure that thermally-processed, shelf stable canned product is wholesome and unadulterated.

Moreover, a quality control program would have to contain a provision that would invoke tightened criteria compared to those regularly employed in the establishment's quality control program in cases where unwholesome product, abnormal containers, or other irregularities, which may compromise product wholesomeness, occur. Such tightened criteria could include, for

example, increasing the incubation sampling rate, lengthening the incubation period, delaying product shipment until after the incubation period has ended, intensifying container condition examinations prior to shipment, or other actions depending upon the quality control program. An establishment would use these tightened criteria until the cause of the irregularities is identified and resolved, and the Agency has determined that the corrective action taken by the establishment is sufficient to produce wholesome and unadulterated product with the routine provisions contained in the approved quality control program.

The regulations in paragraph (d) of §§ 318.309 and 381.309 would still be applicable in the absence of an approved quality control program.

Interested persons were given until November 25, 1991, to comment on the proposed rule. Near the end of the comment period, the Agency received a request from the petitioner to extend the comment period to allow more time to review the proposal and submit comments. Because the Agency was interested in obtaining information pertaining to the proposed rule, it was determined that the request be granted, and the comment period was reopened until January 27, 1992.

#### *Discussion of Comments*

The Agency received three comments in response to the September 24, 1991, proposal. Two comments were from trade associations and one was received from a processing establishment. All commenters expressed strong support for the Agency's proposal to provide canning establishments with the option to develop alternative means to comply with §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations.

Additionally, all comments received discussed the value of a Hazard Analysis—Critical Control Point (HACCP) system (which involves the identification of critical points in a processing operation, the monitoring and control of those critical points, and the keeping of records and data relative to their control) in assuring the safety of canned products. Two of the three stated that many companies have HACCP-based control procedures in place that exceed the requirements found in the Agency's canning regulations. They added that the incorporation of such controls into a quality control program should be sufficient to assure FSIS of finished product safety.

The Agency shares the view of the commenters on the value of the HACCP

concept as an effective and rational approach to the assurance of food safety. Moreover, FSIS believes that the incorporation of HACCP-based control procedures in a quality control program will undoubtedly increase the likelihood that the Agency will approve such a program.

One commenter stated that the proposal did not explicitly describe what variations from the current regulations would meet FSIS requirements. Another commenter requested that, either in this preamble or by some other suitable mechanism, the Agency would assure approval of a quality control program that contained specific elements. A summary of the suggested elements includes: An augmented incubation program; enhanced finished product container examinations; procedures for handling process deviations and abnormal containers; and a description of the circumstances under which a product recall or withdrawal would be initiated.

The Agency, by design, did not include specific requirements in the proposal, and does not agree with suggestions that such specifics be included in this preamble. The thrust of this rulemaking action is to allow processors wide latitude in voluntarily developing quality control programs that contain variations from the specific requirements in §§ 318.309 and 381.309. A processor would be free to propose a quality control program addressing any or all of the requirements of §§ 318.309(d) or 381.309(d). How a proposal would be developed would depend in large part on a processor's objectives.

For example, a processor who desires to place product at retail sooner than the regulations now permit might propose to incubate product samples for only five days and then immediately ship the finished lots. In this example, the processor could incorporate an augmented incubation sampling procedure into the quality control program. The Agency would likely expect the program to include details on the temperature range of the incubator during the five-day sample incubation period. Such incubation conditions would have to be deemed scientifically equivalent to the current requirements of 10 days at 95 F (35 C).

FSIS has not accepted the suggestion to list in this preamble specific elements or requirements that would assure Agency approval of quality control programs that differ from the specific requirements of §§ 318.309 and 381.309. However, guidelines to assist interested persons in preparing proposals will be



available when this rule becomes effective. Such guidelines will only contain advice on the type and amount of information that would constitute an approvable program and will not have any regulatory compliance requirements.

#### Final Rule

For the reasons discussed in the preamble, FSIS is amending parts 318 and 381 of the Federal meat and poultry products inspection regulations as set forth below.

#### List of Subjects

##### 9 CFR Part 318

Canned products; Meat inspection; Quality control.

##### 9 CFR Part 381

Canned product; Packaging and containers; Poultry products inspection; Quality control.

#### PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901-1906; 21 U.S.C. 601-605; 7 CFR 2.17, 2.55.

2. Section 318.309 is amended by revising paragraphs (b), (c), and (d)(1)(viii) to read as follows:

##### § 318.309 Finished product inspection.

(b) Any partial quality control program for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 318.4 of this part.

(c) That portion of a total quality control system for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 318.4 of this part.

(d) \* \* \*

(1) \* \* \*

(viii) *Shipping*. No product shall be shipped from the establishment before the end of the required incubation period except as provided in this paragraph or paragraph (b) or (c) of this section.

#### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451-470, 7 CFR 2.17, 2.55.

2. Section 381.309 is amended by revising paragraphs (b), (c), and (d)(1)(viii) to read as follows:

##### § 381.309 Finished product inspection.

(b) Any partial quality control program for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 381.145 of this part.

(c) That portion of a total quality control system for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 381.145 of this part.

(d) \* \* \*

(1) \* \* \*

(viii) *Shipping*. No product shall be shipped from the establishment before the end of the required incubation period except as provided in this paragraph or paragraph (b) or (c) of this section.

Done at Washington, DC, on: July 15, 1992.

H. Russell Cross,  
Administrator, Food Safety and Inspection Service.

[FR Doc. 92-19918 Filed 8-20-92; 8:45 am]

BILLING CODE 3410-DW-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 39

[Docket No. 92-NM-60-AD; Amendment 39-8281; AD 92-13-11]

#### Airworthiness Directives; de Havilland, Inc., Model DHC-8-100 and Model DHC-8-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-100 and Model DHC-8-300 series airplanes. This action requires an inspection to detect discrepancies and damage of the low fuel pressure switch adapter/snubber (located on each engine fuel heater), and replacement, if necessary. It also requires an inspection to detect gaps or openings in each nacelle and engine-mounted firewall area, and in certain weather seals in the nacelles, and correction of discrepancies, if necessary. This amendment is prompted by an incident in which an airplane experienced an in-flight nacelle

explosion and fire. The actions specified in this AD are intended to prevent an in-flight explosion and fire with the nacelle zones.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-60-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Mr. R.P. Fiesel or Mr. Pat Perrotta, New York Aircraft Certification Office, Propulsion Branch, ANE-174, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-7422; fax (516) 791-9024.

#### SUPPLEMENTARY INFORMATION:

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-8-100 and Model DHC-8-300 series airplanes. Transport Canada Aviation advises that a Model DHC-8-100 airplane recently experienced an in-flight nacelle explosion and fire. The fire was apparently the result of fatigue failure of the fuel low pressure switch adaptor (snubber), de Havilland part number 82820191-001, due to maintenance-induced plastic deformation. The improper seating of the adaptor allowed the adaptor and switch assembly to vibrate during engine operation, resulting in the failure of the adaptor in the male thread run-out area. The failure of the switch/adaptor assembly allowed fuel to leak within zone 2 of the nacelle,



where it was atomized by the normal airflow within this zone. This fuel-air mixture reached a source of ignition, leading to an explosion and fire in zones 1, 2, and 3 of the nacelle. It was observed that gaps and openings in the engine firewall may have allowed the fuel/air mixture inside zone 2 to reach hot surfaces in zone 1. This condition, if not corrected, could result in an explosion and fire within the nacelle zones.

De Havilland, Inc., has issued Alert Service Bulletin A8-73-14, Revision B, dated April 24, 1992, that describes procedures for an inspection of the low fuel pressure switch adapter/snubber to detect damage to the threads, indication of over-torque, and proper seating, and replacement of the adapter/snubber assembly, if necessary.

De Havilland has also issued Service Bulletin 8-28-15, Revision A, dated April 17, 1992, that describes procedures for installing Modification 8/1208. This modification involves the installation of a new pressure fuel warning switch. Once this modification is installed, the need for inspections of the low fuel pressure switch adapter/snubber is eliminated.

Transport Canada Aviation recently issued a Canadian Airworthiness Directive addressing the fuel leakage problem in order to assure the continued airworthiness of these airplanes in Canada.

The airplane model is manufactured in Canada and is type certificated for operation of the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to the bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent an in-flight explosion and fire within the nacelle zones. This AD requires repetitive inspections to detect discrepancies of the low fuel pressure switch adapter/snubber (location on each engine fuel heater), and replacement of discrepant parts, if necessary. The installation of Modification 8/1208 is provided as an option terminating action for these

repetitive inspections. The actions are required to be accomplished in accordance with the service bulletins described previously.

This AD also requires inspection for gaps and openings in each nacelle vertical firewall section, firewall extension, and engine-mounted firewall; and the weather seals around the access panels over the top rear section of each nacelle; and correction of discrepancies, if necessary. These actions are required to be accomplished in accordance with procedures in the applicable section of the de Havilland Model DHC-8 Maintenance Manual. The FAA considers that, due to the incidents of fuel and oil leaks entering the zone 1 area of the nacelle that have led to explosion-type fires, it is necessary that all gaps and openings that may exist in the engine nacelle firewall be sealed as soon as possible. This inspection will ensure that this is accomplished in a timely manner.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to address specified under the caption "ADDRESSES." All communications receive on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports that commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-60-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policy and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.



**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-13-11. De Havilland, Inc.: Amendment 39-8281. Docket 92-NM-60-AD.**

**Applicability:** Models DHC-8-102, -103, -301, and -311 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent an in-flight explosion and fire within the nacelle zones, accomplish the following:

(a) For Model DHC-8-100 and -300 series airplanes, serial numbers 3 through 248, on which Modification No. 8/1208 has not yet been accomplished:

(1) Within 30 days after the effective date of this AD, remove and inspect the low fuel pressure switch adapter/snubber located on each engine fuel heater for damage to threads, indication of over-torque, and for proper seating, in accordance with the accomplishment instructions of de Havilland Alert Service Bulletin A8-73-14, Revision B, dated April 24, 1992. If the adapter/snubber is damaged or if evidence of over-torque is present, prior to further flight, replace the adapter/snubber with a serviceable part, in accordance with that service bulletin.

(2) Thereafter, at any time in which the low fuel pressure switch adapter/snubber assembly is removed, accomplish the inspection of the assembly as described in paragraph (a)(1) of this AD.

(3) Installation of Modification 8/1208, in accordance with de Havilland Service Bulletin 8-28-15, Revision A, dated April 17, 1992, constitutes terminating action for the inspections specified in paragraph (a)(1) and (a)(2) of this AD.

(b) For all Model DHC-8-100 and -300 series airplanes: Within 30 days after the effective date of this AD accomplish the procedures specified in paragraphs (b)(1) and (b)(2) of this AD:

(1) Inspect each nacelle vertical firewall section, firewall extension, and engine-mounted firewall (reference: Maintenance Manual section 71-30-00) for gaps and openings that could permit flammable fluid to pass through. Gaps and openings may be found at lap joints, between bolts, and at carry-through fittings and grommets. If gaps are found, prior to further flight, seal the gaps using PR812, Pro-Seal 700, or other approved firewall sealants. (Reference Maintenance Manual section 20-21-20.) Allow sealant to cure for at least 4 hours prior to further flight.

(2) Within 30 days after the effective date of this AD, inspect access panels 419AT and 429AT as specified in DHC-8 Maintenance Manual (section 6-40-10, pages 12 and 14 (Reference Illustrated Parts Catalog 54-30-00, Figure 5, Items 410 and 420) for the presence and condition of the weather seal in the gap between the panels and the adjacent structure. If the gap is not sealed, prior to further flight, seal the panels using PR1422, PR1435, or other sealant specified in the DHC-8 Maintenance Manual, section 20-21-16. A release agent, applied prior to sealing, also may be used as specified in DHC-8 Maintenance Manual, section 20-21-19.

Allow the sealant or release agent to cure for at least 4 hours, prior to further flight.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York, ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement of the low fuel pressure switch adapter/snubber assembly shall be done in accordance with de Havilland Alert Service Bulletin A8-73-14, Revision B, dated April 24, 1992. The modification of the assembly shall be done in accordance with de Havilland Service Bulletin 8-28-15, Revision A, dated April 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.  
[FR Doc. 92-20028 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 92-NM-127-AD; Amendment 39-8312; AD 92-16-03]

**Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10 series airplanes. This action requires an inspection to detect cracking of the right- and left-hand

spoiler mixer brackets, and replacement, if necessary. This amendment is prompted by reports of failure and several instances of cracking of the spoiler mixer brackets. The actions specified in this AD are intended to prevent inadvertent asymmetric spoiler deployment, which could cause reduced controllability of the airplane.

**DATES:** Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-127-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-15B. This information may be examined at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports of failure and cracking of the spoiler mixer brackets on McDonnell Douglas Model DC-10 series airplanes. Failure of a bracket occurred on one airplane during taxi as the flight crew was performing the roll out check of the flight control system. Subsequent investigation revealed that the mount legs of the left-hand spoiler mixer bracket had failed. That failure was attributed to fatigue cracking. The mixer then moved aft and down, thus inputting an extend command to the right-hand spoilers 1, 4, and 5; this subsequently led to deployment of the spoilers on the right wing. The airplane



involved had accumulated 49,440 flight hours and 20,446 landings prior to failure of the spoiler mixer bracket.

In addition to the one report of a failed bracket, the FAA has received reports of nine cracked brackets that were detected on several airplanes that had accumulated between 8,914 and 24,824 landings. The cracking has been attributed to fatigue.

Failure of the spoiler mixer brackets, if not corrected, could result in inadvertent spoiler deployment, which could result in reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992, that describes procedures for inspection of the right- and left-hand spoiler mixer brackets to detect cracking, and replacement of the brackets, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC-10 series airplanes of the same type design, this AD is being issued to prevent failure of the spoiler mixer brackets. This AD requires repetitive inspections to detect fatigue cracking of the right- and left-hand spoiler mixer brackets, and replacement, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-127-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-03. McDonnell Douglas: Amendment 39-8312. Docket 92-NM-127-AD.

*Applicability:* Model DC-10-10, -15, -30, -40, and KC-10A (Military) series airplanes on which spoiler mixer brackets, part number APH7275-1, APH7275-501, APH7275-503, APH7275-505, APH7275-507, or APH7275-509, have been installed; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the spoiler mixer brackets, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Unless accomplished within the last 1,500 landings, conduct an eddy current inspection of the right- and left-hand spoiler mixer brackets in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992, at the later of times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 100 landings or within 60 days after the effective date of this AD, whichever occurs first; or

(2) Prior to the accumulation of 8,000 landings on the currently installed brackets.

(b) If no cracking is detected, repeat the eddy current inspection at intervals not to exceed 1,500 landings.

(c) If cracking is detected, accomplish the procedures specified in paragraphs (c)(1) and (c)(2) of this AD:

(1) Prior to further flight, replace the spoiler mixer bracket with one having the same part number; or with a spoiler mixer bracket having part number APH7275-507 or APH7275-509, as applicable; in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992.

(2) Prior to the accumulation of 8,000 landings on the spoiler mixer bracket installed in accordance with paragraph (c)(1) of this AD, conduct an eddy current inspection of the right- and left-hand spoiler mixer brackets in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992. Thereafter, repeat the eddy current inspection at intervals not to exceed 1,500 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.



Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001. Attention: Business Unit Manager, Technical Publication—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(g) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20027 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Parts 21 and 23

[Docket No. 098CE, Special Conditions 23-ACE-66]

### Special Conditions; Grob Model G520T Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Special Conditions.

**SUMMARY:** This final special condition is being issued for the Grob Model G520T Series airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. This novel and unusual design feature includes the use of composite materials for primary flight structure for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This final special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

**EFFECTIVE DATE:** September 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** J. Lowell Foster, Aerospace Engineer,

Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 7, 1991, Burkhart Grob Luft und Raumfahrt GmbH, Postfach 1257, D-8948, Mindelheim, Germany, made application for a type certificate through the Luftfahrt Bundesamt (LBA) to the FAA Brussels Office for the Model G520T airplane. The Grob Model G520T Series airplane is a two seat, trainer version of the G520, which is a single-seat, high aspect ratio, pressurized, mid-wing monoplane with tricycle landing gear. The Grob Model G520T Series airplane utilizes composite material for its structure, powered by a turbopropeller engine. The maximum gross weight is unchanged from the Grob Model G520 Series airplane at 9,950 pounds.

##### Type Certification Basis

The type certification basis for the Grob Model G520T Series airplane is as follows: Part 21 of the FAR, §§ 21.29, 21.183(c) and part 23 of the FAR, effective February 11, 1965, including amendment 23-1 through 23-34; and amendment 23-42, § 23.831; and part 36 of the FAR, effective November 18, 1969, including amendments 36-1 through amendment 36-18; and SFAR 27, effective February 1, 1974, including amendments 27-1 through 27-5; and special conditions pursuant to part 21 of the FAR, § 21.16 issued to the Egrett model, and published on November 14, 1990, (55 FR 47455); and Equivalent Safety Finding No. ACE-91-01, dated June 25, 1991; and Section 611(b) of the FAA Act of 1958, and Exemption No. 5223 granted by the FAA (§ 11.27) on September 13, 1990.

##### Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Grob Model G520T Series airplane contains a

number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. A special condition is considered necessary because the airworthiness requirements of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the airplane.

The Grob Model G520T airframe is made of advanced composite material and is assembled by the extensive use of bonding. Composite materials as used in airplane airframes at this time are typically more susceptible, than commonly used aluminum structure, to damage from intrinsic and discrete sources that might adversely influence strength properties. Because of this and other factors, it is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Furthermore, because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as (a) residual strength load with large area manufacturing defects (e.g., understrength bonds) and impact damage from discrete sources, and (b) ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects.

##### Discussion of Comments

Notice of Proposed Special Condition, Docket No. 098CE, Notice No. 23-ACE-66 (57 FR 9513, March 19, 1992) proposed a special condition for the Grob Model G520T Series airplane. The comment period closed July 17, 1992.

No comments pertaining to the notice were received. The special condition, as proposed by Notice No. 23-ACE-66, is issued without change.

##### Conclusion

In view of the design feature discussed above, the following special condition is issued for the Grob Model G520T Series airplane, under the provisions of § 21.16, provide a level of safety equivalent to that intended by the applicable regulations. This action is not a rule of general applicability and affects only the model/series of airplane identified in the special condition.

##### List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.



The authority citation for these special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

#### Adoption of the Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Grob Model G520T Series airplane:

##### 1. Evaluation of Composite Structure

Instead of complying with §§ 23.571 and 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in a catastrophic loss of the airplane, the wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces and attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; for example, bond defects, or damage from discrete sources under repeated loads expected in service; that is, between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program

suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations, must be documented in test proposals.

(f) The structure of the pressurized cabin and fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(1) Critical limit flight loads with the combined effects of normal operating pressures and expected external aerodynamic pressures; and

(2) The expected external aerodynamic pressure in lg flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without consideration of any other load.

(g) The wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, vertical stabilizer and attaching structure, and all movable control surfaces and their attaching structure, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) Instead of a non-destructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbands of each bonded joint, consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition, must be determined by analysis, tests, or both. Disbands of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply

the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; for example, exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials, must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to  $V_D$  with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

Issued in Kansas City, Missouri, on August 13, 1992.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-19992 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 91-ASO-19]

#### Alternation of VOR Federal Airway; FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action alters the description of VOR Federal Airway V-539 located in the vicinity of Key West, FL. The realignment of the airway improves air traffic separation and increases safety for the traffic flow in the area.

**EFFECTIVE DATE:** 0901 u.t.c., October 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800



Independence Avenue, SW.,  
Washington, DC 20591; telephone: (202)  
267-9250.

#### SUPPLEMENTARY INFORMATION:

##### History

On November 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of Federal Airway V-539 located in the vicinity of Key West, FL (56 FR 60948). The realignment of the airway would improve air traffic separation and increase safety for the traffic flow in that area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

##### The Rule

This amendment to part 71 of the Federal Aviation Regulations improves the flow of traffic in the Key West, FL, terminal area and increases air safety by having divergence minima between V-225 and V-539 airway segments.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

##### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CR part 71, as follows:

#### PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

##### Section 71.123 Domestic VOR Federal Airways

\* \* \* \* \*

##### V-539 [Revised]

From Key West, FL; INT Key West 016° and Lee County, FL, 167° radials; to Lee County.

\* \* \* \* \*

Issued in Washington, DC, on August 12, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19991 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 92-ANM-18]

#### Removal of VOR Federal Airway V-349; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Federal Airway V-349 located in the vicinity of Bellingham, WA. The Bellingham VHF Omnidirectional Range (VOR) navigational signal has deteriorated to the point where the minimum en route altitude has been raised from 5,400 feet mean sea level (MSL) to 10,000 feet MSL over the JAWBN intersection. This action will aid flight planning and enhance safety.

EFFECTIVE DATE: 0901 w.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

#### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes V-349 located in the vicinity of Bellingham, WA. The performance of the Bellingham VOR has deteriorated to the point that the FAA was required to raise the minimum en route altitude along that airway from 5,400 feet MSL to 10,000 feet MSL in order to navigate along V-349. The deterioration of the Bellingham VOR navigational signal has created a hardship on general aviation pilots and has become an air safety hazard. Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to remove V-349. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in Section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be removed subsequently from the Handbook.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

##### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.



**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7 Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.123 Domestic VOR Federal Airways*

\* \* \* \* \*

**V-349 [Removed]**

\* \* \* \* \*

Issued in Washington, DC, on August 14, 1992.

Harold W. Becker,

Manager Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19990 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

**Coast Guard****33 CFR Part 117**

[CGD 92-015]

**Drawbridge Operation Regulations**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard regulations prescribe operating requirements for specific drawbridges. The drawbridges are listed by the State(s) in which they are located and by the waterway they cross. The Coast Guard is amending these drawbridge regulations to eliminate duplicate entries and insert cross-references in their places, in cases where a bridge is located in two States. This decreases the likelihood of incomplete, inconsistent, or conflicting provisions for drawbridges located in two States.

**EFFECTIVE DATE:** August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Marcia L. Edwards, Chief, Alternations, Drawbridges and Systems Branch (C-NBR-1), at (202) 267-0375.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

There have been no prior publications in the *Federal Register* in connection with this rulemaking.

**Drafting Information**

The principal persons involved in drafting this document are Ms. Marcia L. Edwards, Project Manager, and Donald W. Faleris, Project Counsel, Office of Chief Counsel.

**Background and purpose**

In part 117, subpart B, bridges are listed by State and, within each State,

by waterway. For bridges that span a waterway which is a border between two States, operating requirements are currently listed under both States. Sometimes operating requirements will pertain to a series of bridges—interstate, intrastate, or both. Throughout subpart B, identical operating requirements are reprinted under different state headings, in separate sections of the Code of Federal Regulations. When operating requirement provisions for these bridges are amended or new bridges are regulated, the possibility exists that a particular listing may be overlooked, since listings currently do not make reference to each other at this time. The purpose of this administrative change is to ensure that accurate information is available to the mariner at all times and that information is cross-referenced where individuals are likely to look.

The specific regulations in subpart B should be read together with the general requirements in subpart A, which pertain to all drawbridges across the navigable waters of the United States.

**Discussion of Amendments**

These amendments make no substantive changes to drawbridge regulations. A cross-reference will replace the current information for one State listing, for each drawbridge located in two States.

In § 117.937, a technical amendment is being made. Both § 117.371 and § 117.937 refer to the same bridge, at Clio, Georgia, under two different state listings. When § 117.371, under Georgia, was amended in 1991 (56 FR 16008), the dual listing, § 117.937, under South Carolina, inadvertently was not amended. By replacing the current wording of § 117.937 with a cross-reference to § 117.371, the inconsistency between the sections will be eliminated.

This regulatory change is effective upon publication. There has been no notice of proposed rulemaking with a comment period, nor will there be a 30-day period between publication and the effective date. Both of these are usually required by the Administrative Procedures Act (APA). However, the APA makes an exception where good cause can be shown (5 U.S.C. 553(b) and (d)(3)). This rulemaking is a technical amendment to existing regulations, an administrative change for purposes of clarity and consistency. For this reason, the Coast Guard finds that neither a notice of proposed rulemaking with a comment period nor a delayed effective date are necessary or in the public interest.

**Regulatory Evaluation**

This rulemaking is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 28, 1979). The change is editorial only and will have no economic impact. A Regulatory Evaluation is not necessary since there will be no cost to the general public.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking was required. This rule did not require a general notice of proposed rulemaking and is, therefore, exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

This change is editorial only. Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this editorial change in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this change does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under federal law, the authority to regulate the opening of drawbridges for the passage of vessels is vested in the Secretary of Transportation and delegated to the Coast Guard. The Coast Guard intends this rule to preempt State action addressing this subject matter.

**Environment**

The Coast Guard has considered the environmental impact of this amendment and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation, since it is only editorial. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying at the Office of the Marine Safety Council, room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW.,



Washington, DC 20593-0001, between 8:00 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

#### Subpart B—Specific Requirements

2. Section 117.359 is revised to read as follows:

##### § 117.359 Chattahoochee River.

See § 117.107, Chattahoochee River, listed under Alabama.

3. Section 117.373 is revised to read as follows:

##### § 117.373 St. Marys River.

See § 117.329, St. Marys River, listed under Florida.

4. Section 117.403 is revised to read as follows:

##### § 117.403 Wabash River.

See § 117.397, Wabash River, listed under Illinois.

5. Section 117.407 is revised to read as follows:

##### § 117.407 Missouri River.

See § 117.411, Missouri River, listed under Kansas.

6. Section 117.491 is revised to read as follows:

##### § 117.491 Red River.

See § 117.135, Red River, listed under Arkansas.

7. Section 117.684 is revised to read as follows:

##### § 117.684 Pearl River.

See § 117.488, Pearl River, listed under Louisiana.

8. Section 117.700 is revised to read as follows:

##### § 117.700 Piscataqua River.

See § 117.531, Piscataqua River, listed under Maine.

9. Section 117.904 is revised to read as follows:

##### § 117.904 Delaware River.

See § 117.716, Delaware River, listed under New Jersey.

10. Section 117.937 is revised to read as follows:

##### § 117.937 Savannah River.

See § 117.371, Savannah River, listed under Georgia.

11. Section 117.981 is revised to read as follows:

##### § 117.981 Sabine River.

See § 117.493, Sabine River, listed under Louisiana.

12. Section 117.1099 is revised to read as follows:

##### § 117.1099 St. Croix River.

See § 117.667, St. Croix River, listed under Minnesota.

13. Section 117.1103 is revised to read as follows:

##### § 117.1103 Upper Mississippi River.

See § 117.671, Upper Mississippi River, listed under Minnesota.

Dated: August 4, 1992.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-19931 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 117

[CGD13 92-05]

#### Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** At the request of the Washington State Department of Transportation (WADOT), the Coast Guard is establishing temporary regulations governing operation of the Evergreen Point Bridge (SR-520) across Lake Washington between Seattle and Bellevue, Washington. The temporary regulation is effective through summer of 1993.

This change insures the safe operation of the drawspan while malfunctions of the operating mechanism are being diagnosed and repaired.

This action provides for the reasonable needs of navigation by allowing the bridge owner to provide limited openings for navigation during periods of reduced vehicular traffic.

Also, it provides the time needed to return the draw to the closed position before the next period of peak vehicular traffic.

**EFFECTIVE DATE:** September 21, 1992, and terminates on September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553-5864).

#### SUPPLEMENTARY INFORMATION:

##### Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Laticia J. Argenti, project attorney.

##### Regulatory History

On June 12, 1992, the Coast Guard published a proposed temporary rule in the *Federal Register* (57 FR 25002). The Commander, Thirteenth Coast Guard District also published the proposal as a Public Notice dated June 23, 1992. In each notice interested parties were given until July 13, 1992 to submit comments. The Coast Guard received no objections to the proposed temporary rule.

##### Discussion of Temporary Rule

The operating mechanism for drawspan of the Evergreen Point Bridge has been plagued with serious electrical malfunctions. In the interest of safety, the Coast Guard granted WADOT an emergency departure from the operating regulations. WADOT has asked and the Coast Guard has approved an extension of the temporary regulations until the problem has been diagnosed and the necessary repairs are made. The temporary regulations require that the draw of the Evergreen Point Bridge open on signal from 11 p.m. to 2 a.m. Sunday through Friday and from 11 p.m. to 5 a.m. Friday through Sunday, if at least 12 hours advance notice is given. This mode of operation allows WADOT to provide limited openings for navigation during periods of reduced vehicular traffic. Also, it provides the time necessary to diagnose and repair any operational problems that might arise and to then return the draw to the closed position before the next period of peak vehicular traffic. It is anticipated that this temporary regulation would be in effect through summer of 1993, after which time the former regulation would be reinstated or a less restrictive regulation would be proposed.

##### Regulatory Evaluation

This temporary rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Evergreen Point Bridge has averaged 29.5 openings per year for vessels over the last five years. This level of activity is expected to remain fairly constant for the foreseeable future. Although some



vessel operators may be inconvenienced during the span of temporary regulation, openings will still be provided on a daily basis.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because this temporary rule imposes no new requirements on small business and will result in partial relief from a regulatory burden on the owner or operator of the bridge, the Coast Guard does not expect this temporary rule to have a significant economic impact on a substantial number of small entities.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determine statement has been prepared and placed in the rulemaking docket.

#### List of Subjects in 33 CFR Part 117

##### Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended to read as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.1049 paragraph (d) is removed and paragraphs (a) and (c) are temporarily revised to read as follows:

§ 117.1049 Lake Washington.

(a) The draw shall open on signal for the passage of vessels from 11 p.m. to 2 a.m. Sunday through Friday and from 11 p.m. to 5 a.m. Friday through Sunday if at least 12 hours notice is given. At all other times the draw need not open.

(b) \* \* \*

(c) All non-self-propelled vessels, rafts, and other watercraft navigating this waterway which require an opening of the draw shall be towed by a suitable self-propelled vessel while passing through the draw.

Dated: August 7, 1992.

J. E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander,  
13th Coast Guard District.

[FR Doc. 92-19935 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 117

[CGD7 91-84]

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of Palm Beach County, the Coast Guard is changing the regulations governing the Donald Ross Road Bridge, mile 1009.3 at Jupiter by permitting the number of openings to be limited during certain periods. This change is being made because of reports of vehicular traffic congestion. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** September 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, Aids to Navigation Branch (305) 536-4103.

**SUPPLEMENTARY INFORMATION:**

#### Drafting Information

The principal persons involved in drafting this document are Walt Paskowsky, Project Manager, and LT Jacqueline Losego, Project Counsel.

#### Regulatory History

On December 5, 1991, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Atlantic Intracoastal Waterway, FL in the *Federal Register* (56 FR 63701). The Coast Guard received 13 letters commenting on the proposal. A public hearing was not requested and one was not held.

#### Background and Purpose

The bridge presently opens on signal. This rule will provide for seasonal

openings on the hour, quarter-hour, half-hour, and three-quarter hour during weekday morning and evening commuter traffic periods from 1 October to 31 May. This will eliminate back-to-back openings and allow sufficient time for dispersal of increased seasonal vehicular traffic before the next opening. The holding areas near the bridge are considered adequate to accommodate the expected accumulation of vessels during the closure periods. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property will upon proper signal continue to be passed through the draw at any time.

#### Discussion of Comments

Thirteen letters were received. Eleven supported the proposal, or suggested alternate schedules such as opening every 20 to 30 minutes. Two letters requested that action be taken against vessels that do not lower appurtenances to pass beneath the bridge without opening it. This matter is addressed in 33 CFR 117.11 which prohibits signalling a drawbridge to open for any non-structural vessel appurtenance which is not essential to navigation or which is easily lowered. One letter suggested the opening times be posted on roadway signs. This has been brought to the attention of the bridgeowner. Two letters objected to the proposal, citing holding difficulties for waiting boats. An onsite investigation did not reveal the presence of unsafe holding areas near the bridge. In addition, openings are scheduled at sufficient intervals to prevent vessels from being required to wait an extended period for an opening. At the suggestion of the Town of Juno Beach, the proposed regulations were implemented on a trial basis from March 9 through April 8, 1992. During this period, which is the busiest month of the year for bridge openings, only 40% of the authorized openings actually occurred. The Coast Guard has carefully considered all the comments. Since the bridge logs indicate that less than half of the authorized openings would normally occur, the 15 minute schedule is considered reasonable for both cars and boats. No additional information was presented to justify further change to the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on December 5, 1991.

#### Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast



Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the impact will be minimal on all "small entities" because commercial tugs with tows are exempt from the rule. Therefore the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

**Federalism:** The action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment:** The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261(r) is added to read as follows:

#### § 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

(r) The draw of the Donald Ross Road Bridge, mile 1009.3 shall open on signal, except that from 1 October to 31 May, Monday through Friday, except federal holidays, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

Dated: August 7, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard; Commander, Seventh Coast Guard District.

[FR Doc. 92-20001 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

#### POSTAL SERVICE

#### 39 CFR Part 111

#### Domestic Mail Manual; Miscellaneous Amendments

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 43 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. Most of the revisions are minor, editorial, or clarifying. Substantive changes have previously been published in the Federal Register.

**EFFECTIVE DATE:** June 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Neva Watson, (202) 268-2963.

**SUPPLEMENTARY INFORMATION:** The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 43, dated June 21, 1992. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following excerpt from the Summary of Changes section of the transmittal for issue 43 covers the minor changes not previously described in interim or final rules published in the Federal Register.

#### Summary of Changes

Exhibits 122.17, 122.18, 122.21, 144.743a, 367.322b(5), 369.1, 641.411b(5), 642.31, 768.1, and 932.2 are labeled with the corresponding section numbers to

facilitate reference. No notice of these changes was published.

Exhibits 122.63d-1, sections 441.315b, 441.316b, 641.135e(2), and 641.135f(2) are revised to reflect changes in mail processing operations and APO/FPO labeling information. (*Postal Bulletin* 21811, 3-19-92; *Postal Bulletin* 21813, 4-16-92).

Sections 122.72, 124.63, 127, 128, 136.75, 136.83, 136.84, 136.91, 136.953, 137.242, 141.28, 141.29, 143.17, 144.342, 144.962, 152.81, 152.84, 159.213, 164.22, 164.23, 164.53, 164.71, 164.74, 164.75, and 164.83 are revised to correct codification. Internal citations are revised accordingly. No notice of these revisions was published.

Section 122.81 is revised to reflect the standardized addressing of overseas military mail implemented by the Postal Service on July 15, 1991. The new standardized addresses must be used beginning July 15, 1992. Address standardization changes the last two lines of military addresses to conform to addressing practices for other U.S. mail. Military APO/FPO ZIP Codes now have three new state abbreviations: AA, AE, and AP, which replace the previous designations of New York, Miami, and San Francisco and Seattle, respectively. (*Postal Bulletin* 21816, 5-28-92.)

Section 126.221 is updated to show the current ZIP Code 20521 that must be used for most mail authorized for transmission by the U.S. Department of State. Mail addressed through the Agency for International Development (AID) uses the ZIP Code 20523. (*Postal Bulletin* 21816, 5-28-92.)

Part 132 is revised to reflect administrative changes in Postal Service divisions and management sectional centers. (*Postal Bulletin* 21812, 4-2-92.)

Sections 137.2, 137.3, 137.4, and 137.5 are revised to clarify certain operational procedures for the processing of and accounting for official mail used by U.S. Government agencies. Part 138 is added to separate regulations for absentee balloting materials from regulations on official mail in part 137. (*Postal Bulletin* 21812, 4-2-92.)

Exhibit 137.251a adds to the list of federal agency authorization codes four federal agencies: Competitiveness Policy Council; National Commission on Judicial Discipline and Removal; National and Community Service, Commission on; and Preservation of America's Heritage Abroad, U.S. Commission for the Four agencies are deleted from this exhibit, and the Tennessee Valley Authority is now a commercial mailer. This amended list reflects other additions, revisions, and deletions of several business reply mail



permits, as well as changes to the sampling numbers (RPW) for some agencies. Boldface type indicates these revisions. No notice of these revisions was published.

Section 144.13 is revised to show a change in name of Rockaway Corporation to Ascom Hasler Mailing Systems, Inc. and a new mailing address for Pitney Bowes, Inc. The names of the manufacturers authorized to lease postage meters are arranged in alphabetical order. No notice of these changes was published.

Exhibit 145.7 is corrected to show the increase from 4½ inches to 4¾ inches for the space reserved for barcoding. No notice of this correction was published.

Section 147.42 is revised to allow value added refunds for some third-class mailings, increase the maximum weight from 2 to 3 ounces in a ZIP + 4 Barcoded rate mailing for which a value added refund is claimed, and clarify that preparation under Chapter 5 is permitted. All pieces in the mailing must meet the applicable requirements for the rates claimed. This section clarifies that pieces bearing precanceled stamps are not eligible for a value added refund; the request for authorization must be processed through the local postmaster and field division general manager/postmaster; participating mailers must implement an internal quality assurance program prior to authorization; and First-Class mailings may not be combined with bulk third-class mailings, and third-class regular bulk rate mail may not be combined with third-class special bulk rate (nonprofit) mail. Pieces in the mailings must meet the following conditions: they must be First-Class or bulk third-class; they must be letter-size and not exceed 3 ounces; if metered, they must be metered by the presenter or the presenter's customer at the eligible rates; and they must be ZIP + 4 barcoded by the presenter. (*Postal Bulletin* 21814, 4-30-92.)

Section 152.8 is revised to clarify procedures for mailers requesting the Postal Service to withdraw and dispose of mail not delivered by a scheduled delivery date. Mailers may request this service by submitting a written authorization or attaching facing slips with instructions. (*Postal Bulletin* 21817, 6-11-92)

Exhibit 159.151a, 291.1, and 391 are amended to clarify the handling of address correction information for First-Class Mail, Priority Mail, and Express Mail. For the first 12 months from the requested effective date of the change of address order, such mail is forwarded (with some restrictions as outlined in 159.151). During months 13 through 18,

such mail is returned to the sender with an on-piece address correction. (*Postal Bulletin* 21813, 4-16-92)

Section 325.12, 364.13, 367.1, 367.2, 369.3, and 447.32 are revised to require the preparation of 3-digit packages and trays regardless of whether the destination is one of the unique 3-digit cities listed in Exhibit 122.63b. Exhibit 367.111 is also revised to show the packaging and tray requirements for presorted First-Class Mail. The applicable First-Class Mail packaging steps call for sequential preparation of packages of 10 or more pieces to 5-digit destinations, packages of 50 or more pieces to unique 3-digit city destinations, and packages of 50 or more pieces to other 3-digit destinations. Remaining pieces fall to the residual portion. These packages must then be presorted together and placed in trays sequentially to 5-digit, unique 3-digit city, SCF, optional ADC, and mixed ADC destinations. (*Postal Bulletin* 21811, 3-19-92)

Sections 442.1, 426.74 and 444.31 are revised to clarify and reorganize the requirements for the preparation of bedloaded bundles. No notice of these revisions was published.

Sections 424.72, 424.742, 424.744, 424.751, 424.762, 624.82, 624.843, 624.845, 624.851, 624.882 and 641.425 are revised to clarify the eligibility for the second- and third-class 125-piece walk-sequence discounts is based on the number of pieces for a route and not the number of delivery stops to which the pieces are addressed. The exception to section 641.425 is added to allow mailers to prepare third-class carrier route sacks containing fewer than 125 pieces or 15 pounds of mail for those carrier routes that do not have a sufficient number of delivery stops to meet the 125-piece or 15-pound minimum at the saturation levels required in section 624.844. (*Postal Bulletin* 21815, 5-14-92)

Section 521.42 is revised to clarify the types of exterior closure devices prohibited on mail submitted for automation-based rates (ZIP + 4 and ZIP + 4 Barcoded). Certain closures cannot be processed by the automated equipment the Postal Service uses for sorting mail. Inflexible or protruding closures can damage the equipment or other mail during processing. This revision specifies that clasps, string, and buttons are prohibited as well as other materials that can hinder mail processing. This revision also establishes the acceptability of staples affixed to booklet-type mailpieces submitted for automation-based rates

when properly placed and securely fastened. (*Postal Bulletin* 21816, 5-28-92)

Section 531.12d is added to indicate that the Delivery Sequence File (DSF) process is an approved method that customers may use for obtaining ZIP + 4 codes for their address lists to qualify their mailings for automation-based ZIP + 4 or ZIP + 4 Barcoded rates. No notice of this revision was published.

Sections 545.2a and 551.721b are corrected to show the required barcode clear zone boundaries and window specifications that took effect January 1, 1992. No notice of these corrections was published.

Exhibit 551.121 is revised to clarify instructions for the derivation of the delivery point barcode (DPBC). Several more examples are added to illustrate exceptions to the general rule that uses the last two digits of the primary street number (or post office box number, rural route box number, or highway contract route number) for the information of the DPBC extension. No notice of this revision was published.

Sections 629.43, 629.523, 629.63, 644.173, 644.175, 644.186, 645.34, 661.21 and parts 692, 693, 695, and 696 are revised with minor changes to codification and punctuation. No notice of these revisions was published.

Sections 645.2, 645.3, 767.42, and 767.43 are revised to clarify and reorganize the requirements for the preparation of bedloaded bundles. No notice of these revisions was published.

Sections 7212.2, 724.24, 762.11, 764.21, 767.23, 767.33, 767.823, and parts 792, 793, 794, and 795 are revised with minor changes to codification and punctuation. No notice of these revisions was published.

Exhibits 767.533c(1) and 767.623c(1) are enclosed within rules lines to prevent the misreading of information with surrounding text. No notice of these changes was published.

Sections 911.31, 914.72, 914.74, 931.52, and 933.4 are recodified. No notice of this recodification was published.

Sections 914.31, 914.32, and 914.33 are reorganized and recodified to clarify the requirements for privately printed COD tags. No notice of these revisions was published.

Sections 914.51 and 919.14 are recodified to facilitate reference. No notice of these revisions was published.

#### List of Subjects in 39 CFR Part 111

Postal Service.



**PART 111—INFORMATION ON POSTAL SERVICE**

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

Transmittal letter for issue 43

Dated June 21, 1992,

Federal Register publication 57 FR [insert FR page number.]

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-20056 Filed 8-20-92; 8:45 am]

BILLING CODE 7710-12-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

[SW-FRL-4197-5]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the list of hazardous wastes contained in EPA regulations for certain solid wastes generated at Care Free Aluminum Products, Inc., (Care Free), Charlotte, Michigan. This action responds to a delisting petition submitted under those regulations, which allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** August 21, 1992.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The

reference number for this docket is "F-92-CFEP-FFFFF." The Public may copy material from any regulatory docket at a cost of \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:**

For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7392.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Authority**

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

**B. History of this Rulemaking**

Care Free Aluminum Products, Inc., located in Charlotte, Michigan, petitioned the Agency to exclude from hazardous waste control its F019 wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum. After evaluating the petition, EPA proposed, on March 19, 1992 to exclude Care Free's waste from the lists of hazardous waste under 40 CFR §§ 261.31 and 261.32 (see 57 FR 9518).

The Agency did not receive any public comments regarding the proposal and this rulemaking finalizes the proposed decision to grant Care Free's petition.

**II. Disposition of petition****A. Care Free Aluminum Products, Inc., Charlotte, Michigan****1. Proposed Exclusion**

Care Free Aluminum Products, Inc. (Care Free), located in Charlotte, Michigan, petitioned the Agency to exclude from hazardous waste control its wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the

chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." The listed constituents of concern for F019 wastes are hexavalent chromium and cyanide (complexed). (See 40 CFR 261, Appendix VII.)

In support of its petition, Care Free submitted: (1) Detailed descriptions and schematics of its manufacturing and waste treatment processes; (2) a list of all raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and treatment processes; (3) results from total constituents analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24<sup>1</sup> nickel, cyanide (total and reactive), and reactive sulfide; (4) results from EP leachate procedure for the eight TC metals, nickel, and cyanide; (5) results from the Oily Waste Extraction Procedure (OWEP; SW-846 Method 1330) for the eight TC metals and nickel; (6) results from the Toxicity Characteristic Leaching Procedure for TC constituents, fluoride, and nickel; (7) results from total oil and grease analyses; and (8) results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Care Free in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Care Free's petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 57 FR 9518, March 19, 1992, for a detailed explanation of why EPA proposed to grant Care Free's petition for its wastewater treatment sludge filter cake.

**2. Agency Response to Public Comments**

The Agency did not receive any public comments regarding the proposal.

<sup>1</sup> EPA has adopted the Toxicity Characteristic Leaching Procedure (TCLP) in the Toxicity Characteristic (TC) rulemaking (55 FR 11798, March 29, 1990) as a replacement to the EP for the establishment of the TC regulatory levels and these eight metals are now referred to as the TC metals.



### 3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Care Free's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Care Free Aluminum Products, Inc., located in Charlotte, Michigan, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F019.

This exclusion only applies to the processes and waste volume (a maximum of 100 cubic yards generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (e.g., significantly higher levels of hazardous constituents) or increase in waste volume might occur. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 100 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

### III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a

Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

### IV. Effective Date

This rule is effective August 21, 1992. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, 5 U.S.C. 553(d).

### V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

### VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general

notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

### List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 5, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:



## Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Care Free Aluminum Products, Inc.	Charlotte, Michigan	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum (generated at a maximum annual rate of 100 cubic yards), after August 21, 1992. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Michigan. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92-20029 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 261

[SW-FRL-4197-4]

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at MAHLE, Incorporated, Morristown, Tennessee. This action responds to a delisting petition submitted under those regulations, which allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 21, 1992.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-92-MIEP-FFFFF." The public may copy material from any regulatory docket at a cost of \$0.15 per page.

## FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA Hotline, toll free at (800) 424-

9346, or at (703) 920-9810. For technical information concerning this notice, contact Narendra K. Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4787.

## SUPPLEMENTARY INFORMATION:

## I. Background

## A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

## B. History of this Rulemaking

MAHLE, Incorporated, located in Morristown, Tennessee, petitioned the Agency to exclude from hazardous waste control its F019 wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum. After evaluating the petition, EPA proposed, on March 27, 1992 to exclude MAHLE's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 57 FR 10629).

The Agency did not receive any public comments on the proposal and this rulemaking finalizes the proposed decision to grant MAHLE's petition.

## II. Disposition of Petition

A. MAHLE, Incorporated, Morristown, Tennessee

## 1. Proposed Exclusion

MAHLE, Incorporated, located in Morristown, Tennessee, petitioned the Agency to exclude from hazardous waste control its wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." The listed constituents of concern for F019 wastes are hexavalent chromium and cyanide (complexed). (See 40 CFR Part 261, appendix VII.)

In support of its petition, MAHLE submitted: (1) Detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; (2) a list of the raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24, nickel, sulfide, cyanide, formaldehyde, and toluene; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP; as described in 40 CFR 261, appendix II) analyses for the TC constituents (except for the herbicides 2, 4-D, and 2, 4, 5-TP), nickel, cyanide, formaldehyde, and methylene chloride; (5) results from analyses for total oil and grease; (6) results from the Oily Wastes Extraction Procedure (OWEP; SW-846 Method 1330) analyses for the TC metals, nickel, and cyanide; and (7) test results and



information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by MAHLE in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in MAHLE's petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 57 FR 10629, March 27, 1992, for a detailed explanation of why EPA proposed to grant MAHLE's petition for its wastewater treatment sludge filter cake.

## 2. Response to Public Comments

The Agency did not receive any public comments on the proposal.

## 3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that MAHLE's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to MAHLE, Incorporated, located in Morristown, Tennessee, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F019.

This exclusion only applies to the processes and waste volume (a maximum of 33 cubic yards generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (e.g., if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 33 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility,

either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

## III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

## IV. Effective Date

This rule is effective August 21, 1992. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, 5 U.S.C. 553(d).

## V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the

facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

## VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

## VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

## List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping Requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 5, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.



2. In Table 1 of appendix IX of part 261, add the following wastestreams in alphabetical order:

# Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
MAHLE, Inc.	Morristown, Tennessee	Wastewater treatment sludge filter cake (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum (generated at a maximum annual rate of 33 cubic yards), after August 21, 1992. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis sample and test for the constituents listed in 40 CFR 261.24 using the method specified therein. The annual analytical results (including quality control information) must be compiled, certified according to 40 CFR 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by representatives of EPA or the State of Tennessee. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92-20033 Filed 8-20-92; 8:45 am]  
BILLING CODE 6560-50-M

## 40 CFR Part 372

[OPPTS-400070; FRL-4159-5]

### Copper Phthalocyanine Pigments; Toxic Chemical Release Reporting; Community Right-to-Know; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an error published in the *Federal Register* of May 23, 1991, concerning a petition from the Dry Color Manufacturers' Association to exempt three phthalocyanine pigments from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The three pigments (C.I. Pigment Blue 15, CAS No. 14714-8; C.I. Pigment Green 7, CAS No. 1328-53-6; and C.I. Pigment Green 36, CAS No. 14302-13-7) were deleted from the list of toxic chemicals category "copper compounds." The Water Quality Criteria for copper was incorrectly listed.

**EFFECTIVE DATE:** June 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail stop TS-779, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of May 23, 1991 (57 FR 23650), EPA issued a final rule granting a petition to delete C.I. Pigment Blue 15,

C.I. Pigment Green 7, and C.I. Pigment Green 36 from the copper compounds category of the EPCRA section 313 toxic chemical list. In the preamble on page 23651, third column, third full paragraph, line six, the Water Quality Criteria for copper was incorrectly listed as acute criteria for freshwater is 22 micrograms/liter (ug/L), chronic criteria in freshwater is 5.2 ug/L, and in salt water both the acute and chronic criteria are 1 ug/L. The correct Water Quality Criteria for copper are 9.2 ug/L acute fresh water, 6.5 ug/L chronic fresh water, and 2.9 ug/L acute salt water. There is no chronic Water Quality Criteria for copper in salt water.

## List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements.

Dated: August 14, 1992.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-20025 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 91-140, FCC 92-351]

### Revision of Radio Rules and Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; Deferring effective date of rules.

**SUMMARY:** This order delays the effective date of rules adopted in *Report*

and *Order* in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992), pending reconsideration.

**EFFECTIVE DATE:** July 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

## SUPPLEMENTARY INFORMATION:

*Adopted:* July 30, 1992;

*Released:* July 30, 1992.

## By the Commission:

1. On April 10, 1992, the Commission released a *Report and Order* in the above captioned proceeding. Various parties, including Nashville Partners, L.P., National Association of Black Owned Broadcasters, National Black Media Coalition, Telecommunications Research and Action Center, and KVEN Broadcasting Corporation have requested that the effective date of the rule changes adopted in that *Report and Order* be deferred or stayed for 60 days or pending action on petitions for reconsideration.

2. We agree with the parties' contention that it could be disruptive to the industry and the public for the new rules to take effect before reconsideration has been completed. Good cause accordingly exists for delaying the effective date of the new rules and the filing of applications for the acquisition of stations that could be granted only under the new rules. To achieve the earliest possible benefits from the new rules, we intend to act promptly on the petitions for reconsideration.

3. Accordingly, *It is ordered* That the August 1, 1992, effective date of the rules adopted in the *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755



(1992), is deferred pending action of the petitions for reconsideration of that *Report and Order*.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-19958 Filed 8-20-92; 8:45 am]

BILLING CODE 6712-01-M

## GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 503, 505, 519, 532,  
552 and 570

[APD 2800.12A, CHGE 41]

### General Services Administration Acquisition Regulation; Real Property Leasing Clauses

AGENCY: Office of Acquisition Policy,  
GSA.

ACTION: Final rule.

**SUMMARY:** This change to the General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), chapter 5, makes miscellaneous changes in regulatory requirements for the acquisition of leasehold interests in real property contained in parts 501, 503, 505, 519, 532 and 570 in order to simplify and improve the leasing program. This change also makes a number of revisions to the text of provisions and clauses in part 552 that are used in contracts for the acquisition of leasehold interests in real property. The matrix at 552.370 is updated to reflect changes made in the provisions and clauses. Part 553 is revised to delete the Standard Form 2B; add illustrations of the new GSA Forms 3517A, 3517B, 3518A, and 3626; and to illustrate the revised GSA Forms 3516, 3517, and 3518. These forms contain the solicitation provisions and contract clauses revised by this change. The matrixes and GSA forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, NW, Washington, DC 20405.

**DATES:** Effective October 1, 1992. Solicitation issued on or after October 1, 1992, shall include the revised solicitation provisions and contract clauses.

**FOR FURTHER INFORMATION CONTACT:** Ida M. Ustad, Office of GSA Acquisition Policy (202) 501-1224.

#### SUPPLEMENTARY INFORMATION:

##### A. Public Comments

A notice of proposed rulemaking was published on June 26, 1991 (56 FR 29201).

No comments were received from the public. Comments from GSA contracting activities have been considered in formulating the final rule.

#### B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

#### C. Regulatory Flexibility Act

General Services Administration certifies the revisions of the regulation regarding the procedures for the acquisition of leasehold interests in real property and in the text and prescriptions for use of various clauses will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. The rule simplifies the leasing process for small blocks of space (10,000 square feet or less) and temporary leases (6 months or less) and makes the terms and provisions of GSA leases more closely parallel commercial leases.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not require any reporting requirements or collection of information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. 3501 et seq.

#### List of Subjects in 48 CFR Parts 501, 503, 505, 519, 532, 552 and 570

##### Government procurement.

Accordingly, parts 501, 503, 505, 519, 532, 552 and 570 are amended to read as follows:

1. The authority citation for 48 CFR parts 501, 503, 505, 532, 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

#### PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.103 is amended by revising paragraph (b) to read as follows:

##### 501.103 Applicability.

(b) Parts 501, 502, 503, 505, 506, 517, 530, 533, 552, 553, 570 and Subparts 504.2, 504.9, 507.1, 509.4, 515.1, 519.3, 519.6, 519.7, 522.8, 522.13, 522.14, 532.1, 532.4, 532.6, 532.8, and 532.9 apply to leases of real property. Other provisions of the GSAR do not apply to leases of

real property unless a specific cross-reference is made in Part 570.

#### PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 503.104-10 is amended by revising paragraphs (a) and (b) to read as follows:

##### 503.104-10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203-71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months.

(b) The contracting officer shall insert the provision at 552.203-72, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed \$100,000, unless:

- (1) Pursuant to FAR 3.104-9(f) a certification is not required.
- (2) A waiver has been granted, or
- (3) Expedited leasing procedures are being used (see 570.304-5).

4. Section 503.404 is amended by revising paragraph (a) to read as follows:

##### 503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203-4, Contingent Fee Representation and Agreement, in solicitations for the acquisition of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months.

#### PART 505—PUBLICIZING CONTRACT ACTIONS

5. Section 505.101 is amended by revising paragraph (c)(2) to read as follows:

##### 505.101 Methods of disseminating information.

(c) \* \* \*

(2) Leasehold interests in real property involving blocks of space of both more than 10,000 square feet and terms which exceed 6 months. Proposed leases of 10,000 square feet or less or for terms of 6 months or less may be publicized when the contracting officer determines such advertising will serve to promote competition.



6. Section 505.203 is amended by revising paragraph (b) to read as follows:

**505.203 Publicizing and response time.**

(b) The publicizing and response times in paragraph (a) above do not apply to proposed acquisitions of leasehold interests in real property involving 10,000 square feet of space or less. In such cases, the contracting officer shall establish response times appropriate for the individual acquisition involved.

**PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

7. Section 519.202-5 is revised to read as follows:

**519.202-5 Data collection and reporting requirements.**

Contracting officers shall submit a GSA Form 2877, Minority Contract Fact Sheet, to the SBTB when an 8(a) contract is awarded or modified.

8. Section 519.304 is revised to read as follows:

**519.304 Solicitation provisions.**

The contracting officer shall insert a provision substantially the same as that at 552.219-1, Small Business Concern Representation, in all solicitations instead of the provision at FAR 52.219-1. When using small purchase procedures the information required by the provision at 552.219-1 may be obtained through other means.

9. Section 519.708 is amended by revising paragraph (a) to read as follows:

**519.708 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the provision at 552.219-72, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of the solicitation if the contract amount is expected to exceed \$500,000 (\$1 million for construction) except for:

- (1) Leases of real property,
- (2) Negotiated prospectus level solicitations for construction or repair and alteration,
- (3) Acquisitions set aside for small business,
- (4) Solicitations for personal services, and
- (5) Solicitations for work to be performed outside any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. This provision must not be used when the provision at 552.219-73, Preparation and

Submission of Subcontracting Plans, prescribed in (b), below, is included in the solicitation.

**PART 532—CONTRACT FINANCING**

10. Section 532.908 is amended by revising paragraph (c) to read as follows:

**532.908 Contract clause.**

(c) The contracting officer shall insert the clause at 552.232-73, Electronic Funds Transfer Payment, in solicitations and contracts for acquisitions of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months, if payment may be made by electronic funds transfer.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

11. Section 552.232-73 is revised to read as follows:

**552.232-73 Electronic funds transfer payment.**

As prescribed in 532.908(c), insert the following clause:

**ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1992)**

(a) Payments under this lease will be made by the Government either by check or electronic funds transfer (EFT). If the Lessor elects to receive payment by EFT, after award, but no later than 30 days before the first payment, the Lessor shall designate a financial institution for receipt of EFT payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(b) For payment by EFT, the Lessor shall provide the following information:

- (1) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.
- (2) Number of account to which funds are to be deposited.
- (3) Type of depositor account ("C" for checking, "S" for savings).
- (4) If the Lessor is a new enrollee to the EFT system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and the required information specified above must be received by the appropriate Government official no later than 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be

dated and contain the signature, title, and telephone number of the Lessor or an authorized representative designated by the Lessor, as well as the Lessor's name and lease number.

(e) Lessor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of Clause)

12. Section 552.270-6 is revised to read as follows:

**552.270-6 Parties to execute lease.**

As prescribed in 570.701-6, insert the following provision:

**PARTIES TO EXECUTE LEASE (AUG 1992)**

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.

(b) If the Lessor is a partnership, the lease shall be signed with the partnership name, followed by the name of the legally authorized partner signing the same, and, if required by the Government, a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany the lease.

(c) If the Lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to so act shall be furnished.

(End of Provision)

13. Section 552.270-10 is revised to read as follows:

**552.270-10 Definitions.**

As prescribed in 570.702-1, insert the following clause:

**DEFINITIONS (AUG 1992)**

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) *Commencement Date* means the first day of the term.

(b) *Contract and Contractor* means *Lease and Lessor*, respectively.

(c) *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) *Delivery Date* means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

(e) *Delivery Time* means the number of days provided by this lease for delivery of the premises to the Government, as such



number may be modified in accordance with the provisions of this lease.

(f) *Excusable Delays* means delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:

- (1) Acts of God or of the public enemy,
- (2) Acts of the United States of America in either its sovereign or contractual capacity,
- (3) Acts of another contractor in the performance of a contract with the Government,
- (4) Fires,
- (5) Floods,
- (6) Epidemics,
- (7) Quarantine restrictions,
- (8) Strikes,
- (9) Freight embargoes,
- (10) Unusually severe weather, or
- (11) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(g) *Lessor* means the sub-lessor if this lease is a sublease.

(h) *Lessor shall provide* means the Lessor shall furnish and install at Lessor's expense.

(i) *Notice* means written notice sent by certified or registered mail, Express Mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.

(j) *Premises* means the space described in this lease.

(k) *Substantially complete and substantial completion* means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(l) *Work* means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

(End of Clause)

14. Section 552.270-11 is revised to read as follows:

#### 552.270-11 Subletting and assignment.

As prescribed in 570.702-2, insert the following clause:

#### SUBLETTING AND ASSIGNMENT (AUG 1992)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of lessor, which shall not be unreasonably withheld.

(End of Clause)

15. Section 552.270-12 is revised to read as follows:

#### 552.270-12 Maintenance of building and premises—Right of entry.

As prescribed in 570.702-3, insert the following clause:

#### MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (AUG 1992)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(End of Clause)

16. Section 552.270-13 is revised to read as follows:

#### 552.270-13 Fire and casualty damage.

As prescribed in 570.702-4, insert the following clause:

#### FIRE AND CASUALTY DAMAGE (AUG 1992)

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of Clause)

#### 552.270-14 [Reserved]

17. Section 552.270-14 is removed and reserved.

18. Section 552.270-15 is revised to read as follows:

#### 552.270-15 Compliance with applicable law.

As prescribed in 570.702-6, insert the following clause:

#### COMPLIANCE WITH APPLICABLE LAW (AUG 1992)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws

applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of Clause)

19. Section 552.270-16 is revised to read as follows:

#### 552.270-16 Inspection—Right of entry.

As prescribed in 570.702-7, insert the following clause:

#### INSPECTION—RIGHT OF ENTRY (AUG 1992)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

- (1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;
- (2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;
- (3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and
- (4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State, and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other leases. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

(End of Clause)

20. Section 552.270-17 is revised to read as follows:

#### 552.270-17 Failure in performance.

As prescribed in 570.702-8, insert the following clause:



**FAILURE IN PERFORMANCE (AUG 1992)**

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment or payments under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

(End of Clause)

21. Section 552.270-18 is revised to read as follows:

**552.270-18 Successors bound.**

As prescribed in 570.702-9, insert the following clause:

**SUCCESSORS BOUND (AUG 1992)**

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of Clause)

22. Section 552.270-20 is revised to read as follows:

**552.270-20 Proposals for adjustment.**

As prescribed in 570.702-11, insert the following clause:

**PROPOSALS FOR ADJUSTMENT (AUG 1992)**

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$25,000. The proposal, including all subcontractor work, will contain at least the following details—

- (1) Material quantities and unit costs;
- (2) Labor costs (identified with specific item or material to be placed or operation to be performed);
- (3) Equipment costs;
- (4) Worker's compensation and public liability insurance;
- (5) Overhead;

- (6) Profit; and
- (7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$100,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804-2);

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804-4); and

(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804-8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of Clause)

23. Section 552.270-21 is revised to read as follows:

**552.270-21 Changes.**

As prescribed in 570.702-12, insert the following clause:

**CHANGES (AUG 1992)**

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs);

(2) Work or services; or

(3) Facilities or space layout.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date;

(2) An equitable adjustment in the rental rate;

(3) A lump sum equitable adjustment; or

(4) An equitable adjustment of the annual operating costs per square foot specified in this lease.

(c) The Lessor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government shall not be liable to Lessor under this clause.

(End of Clause)

24. Section 552.270-22 is revised to read as follows:

**552.270-22 Liquidated damages.**

As prescribed in 570.702-13, insert the following clause:

**LIQUIDATED DAMAGES (AUG 1992)**

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and

agreed liquidated damages, pursuant to this clause, the sum of \$\_\_\_\_\_ for each and every calendar day that the delivery is delayed beyond the date specified for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law.

(End of Clause)

25. Section 552.270-24 is revised to read as follows:

**552.270-24 Tax adjustment.**

As prescribed in 570.702-15, insert the following clause:

**TAX ADJUSTMENT (AUG 1992)**

(a) The Government shall make annual lump sum payments to cover its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). The amount of payment shall be based upon the submission of a proper invoice, including paid tax receipts/statements/bills, from the Lessor to the Contracting Officer. The due date for making payment shall be the 30th day after receipt of the invoice by the Contracting Officer or the 30th day after the anniversary date of the lease, whichever is later. If the invoice submitted does not meet the requirements of a proper invoice, it will be returned to the Lessor within 7 days of receipt. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

(b) The Government's share for the tax increase will be based on the ratio of the rentable square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for nonpayment or delay in payment. If there is any variance between the assessed value of the Government's space and other space in the building, the Government may adjust the basis for determining its share of the tax increase.

(c) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contest the tax assessment, payment under paragraph (a) of this clause shall become due on the first workday of the second month following conclusion of the appeal proceedings.



(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease to a rate below the base year, payment for taxes will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases provided under paragraph (a) of this clause.

#### 552.270-26 [Reserved]

26. Section 552.270-26 is removed and reserved.

27. Section 552.270-27 is revised to read as follows:

#### 552.270-27 Delivery and condition.

As prescribed in 570.702-18, insert the following clause:

##### DELIVERY AND CONDITION (AUG 1992)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.  
(End of Clause)

28. Section 552.270-28 is revised to read as follows:

#### 552.270-28 Default in delivery—Time Extensions.

As prescribed in 570.702-19, insert the following clause:

##### DEFAULT IN DELIVERY—TIME EXTENSIONS (AUG 1992)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date (as such date may be modified pursuant to this lease), time is of the essence. If the Lessor fails to persecute the work with the diligence that will ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease, which termination shall be effective when received by Lessor. The Lessor and the Lessor's sureties, if any, shall be jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term; provided, if the Government procures replacement premises for a term (including all option terms) in excess of the term, the Lessor shall not be liable for excess Government rent or adjustments during such excess part of such term;

(2) All administrative and other costs borne by the Government in procuring a replacement lease or leases;

(3) Such other, additional relief as may be provided for in this lease, at law or in equity.

(4) Damages to which the Government may be entitled under this clause shall be due and payable thirty (30) days next following the date Lessor receives notice from the Contracting Officer specifying such damages.

(b) Delivery by Lessor of less than the minimum square footage required by this lease shall in no event be construed as substantial completion, except as permitted by the Contracting Officer.

(c) Notwithstanding in paragraph (a) of this clause, this lease shall not be terminated under this clause nor the Lessor charged with damages under this clause, if:

(1) The delay in substantially completing the work arises from excusable delays and  
(2) The Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant such action, the delivery date shall be extended, by the Contracting Officer, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.  
(End of Clause)

#### 552.270-29 [Reserved]

29. Section 552.270-29 is removed and reserved.

30. Section 552.270-30 is revised to read as follows:

#### 552.270-30 Progressive occupancy.

As prescribed in 570.702-21, insert the following clause:

##### PROGRESSIVE OCCUPANCY (Aug 1992)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premises unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.  
(End of Clause)

31. Section 552.270-31 is added to read as follows:

#### 552.270-31 Measurement for payment.

As prescribed in 570.702-22, insert the following clause:

##### MEASUREMENT FOR PAYMENT (AUG 1992)

When space is offered and accepted, the space will be mutually measured upon substantial completion. Payment will be made on the basis of actual measurement; however, payment will not be made for substantially completed space which is in excess of the maximum square footage solicited. The annual rent will be calculated by multiplying the annual square foot rate times square footage.  
(End of Clause)

32. Section 552.270-32 is added to read as follows:

#### 552.270-32 Effect of acceptance and occupancy.

As prescribed in 570.702-23, insert the following clause:

##### EFFECT OF ACCEPTANCE AND OCCUPANCY (AUG 1992)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.  
(End of Clause)

33. Section 552.270-33 is added to read as follows:

#### 552.270-33 Default by lessor during the term.

As prescribed in 570.702-24, insert the following clause:

##### DEFAULT BY LESSOR DURING THE TERM (AUG 1992)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions Clause.  
(End of Clause)

34. Section 552.270-34 is added to read as follows:



**552.270-34 Subordination, nondisturbance and attornment.**

As prescribed in 570.702-25, insert the following clause:

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (AUG 1992)**

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that

the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

(End of Clause)

35. Section 552.270-35 is added to read as follows:

**552.270-35 Statement of lease.**

As prescribed in 570.702-26, insert the following clause:

**STATEMENT OF LEASE (AUG 1992)**

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that:

- (1) the lease is in full force and effect;
- (2) the date to which the rent and other charges have been paid in advance, if any; and
- (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

- (1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;
- (2) That the Government shall not be held liable because of any defect in or condition of the premises or building;
- (3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and
- (4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable pre-purchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of Clause)

36. Section 552.270-36 is added to read as follows:

**552.270-36 Substitution of tenant agency.**

As prescribed in 570.702-27, insert the following clause:

**SUBSTITUTION OF TENANT AGENCY (AUG 1992)**

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

(End of Clause)

37. Section 552.270-37 is added to read as follows:

**552.270-37 No waiver.**

As prescribed in 570.702-28, insert the following clause:

**NO WAIVER (AUG 1992)**

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and on acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of Clause)

38. Section 552.270-38 is added to read as follows:

**552.270-38 Integrated agreement.**

As prescribed in 570.702-29, insert the following clause:

**INTEGRATED AGREEMENT (AUG 1992)**

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

(End of Clause)

39. Section 552.270-39 is added to read as follows:

**552.270-39 Mutuality of obligation.**

As prescribed in 570.702-30, insert the following clause:

**MUTUALITY OF OBLIGATION (AUG 1992)**

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of Clause)

40. Section 552.270-40 is added to read as follows:

**552.270-40 Asbestos and hazardous waste management.**

As prescribed in 570.702-31, insert the following clause:

**ASBESTOS AND HAZARDOUS WASTE MANAGEMENT (AUG 1992)**

The certifications made by the Offeror regarding asbestos and hazardous waste management contained in the representation and certification provisions of this lease are material representations of fact upon which the Government relies when making award. If it is later determined that the presence or management of asbestos and/or hazardous waste has been misrepresented, the Government reserves the right to require the Lessor, at no cost to the Government, to abate (remove, encapsulate, enclose, or repair) such asbestos and/or mitigate hazardous waste conditions, with such work performed in accordance with Federal (e.g., EPA, OSHA, and DOT), State, and local



regulations and guidance, or, alternatively, the Government may terminate the lease. This is in addition to other remedies available to the Government.  
(End of Clause)

## PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

41. The heading for subpart 570.2 is revised to read as follows:

### Subpart 570.2—Procedures for Contracting for Leasehold Interests in Real Property

42. Section 570.202 is amended by revising paragraph (a) to read as follows:

#### 570.202 Advertising.

(a) Requirements for blocks of space of more than 10,000 square feet must be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or 505.202.

43. Section 570.203 is amended by revising paragraphs (a)(5), (a)(8), and (a)(9) and by adding paragraph (a)(10) to read as follows:

#### 570.203 Solicitation for Offers (SFO).

(a) \* \* \*

(5) Indicate that offers will be evaluated based on the full term (initial term plus options).

(8) In addition to including the solicitation provisions and contract clauses prescribed in the GSAR, provisions and/or clauses substantially the same as the FAR provisions/clauses listed, must be included in the circumstances indicated.

(i) All solicitations and contracts regardless of the dollar value must include the following provisions/clauses:

FAR Cite	Title
52.203-1	Officials Not to Benefit.
52.203-7	Anti-Kickback Procedures.
52.204-3	Taxpayer Identification.
52.223-5	Certification Regarding a Drug-Free Workplace.
52.233-1	Disputes.

(ii) All solicitations and contracts which exceed \$2,500 must include FAR Clause 52.222-36, Affirmative Action for Handicapped Workers.

(iii) All solicitations and contracts which exceed \$10,000 must include the following provisions/clauses:

FAR Cite	Title
52.215-1	Examination of Records by Comptroller General.
52.222-21	Certification of Nonsegregated Facilities.
52.222-22	Previous Contracts and Compliance Reports.
52.222-25	Affirmative Action Compliance.
52.222-26	Equal Opportunity.
52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

(iv) All solicitations and contracts which exceed \$25,000 must include FAR clauses 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, and 52.222-18, Notification of Employee Rights Concerning Payment of Union Dues or Fees.

(v) All solicitations and contracts which exceed \$100,000 must include FAR provision 52.203-11, Certificate and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(vi) All solicitations and contracts which exceed \$500,000 must include FAR clauses 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, and 52.219-16, Liquidated Damages—Small Business Subcontracting Plan.

(vii) Solicitations and contracts which involve both more than 10,000 square feet of space and terms which exceed 6 months must include the following provisions/clauses:

FAR Cite	Title
52.203-2	Certificate of Independent Price Determination.
52.209-5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
52.209-6	Protecting the Governor's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
52.215-12	Restriction on Disclosure and Use of Data (Solicitations only).
52.219-2	Small Disadvantaged Business Concern Representation.
52.219-3	Women-Owned Small Business Representation.
52.219-13	Utilization of Women-Owned Small Businesses.
52.232-23	Assignment of Claims.
52.233-2	Service of Protest (Solicitations only).

(viii) Solicitations and contracts which exceed \$100,000 and involve both more than 10,000 square feet of space and terms which exceed 6 months must include FAR clauses 52.203-9, Requirement for Certification of Procurement Integrity—Modification.

(ix) Solicitations which exceed \$1 million and involve both more than

10,000 square feet of space and terms which exceed 6 months must include FAR provision 52.222-24, Preaward On-Site Equal Opportunity Compliance Review.

(x) When cost or pricing data is required for work or service exceeding \$100,000, FAR clause 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-24, Subcontractor Cost or Pricing Data, must be included in solicitations and contracts.

(xi) When the contracting officer determines that it is desirable to authorize the submission of facsimile proposals the solicitation must include FAR provision 52.215-18, Facsimile Proposals.

(9) The omission of any provision or clause when its prescription requires it use constitutes a deviation which must be approved under subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., GSAR 552.203-5, Covenant Against Contingent Fees, FAR 52.203-1, Officials Not to Benefit, FAR 52.215-1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause.

(10) Include appropriate forms as prescribed in subpart 570.8.

44. Section 570.204 is amended by revising paragraph (c)(3) to read as follows:

#### 570.204 Changes to SFO's.

(c) \* \* \*

(3) If a modification is so substantial that it requires a complete revision of the solicitation, the solicitation should be canceled and a new solicitation issued. The new solicitation must be advertised if required by 580.202 and be issued to all concerns solicited originally, any concerns added to the original SFO mailing list, and any other interested concerns.

45. Section 570.206 is amended to revise paragraph (b) to read as follows:

#### 570.206 Evaluating offers.

(b) Offers will be evaluated on the basis of the annual price per square foot cost to the Government and other award factors as stated in the SFO.

46. Section 570.208-1 is amended by revising paragraph (b) to read as follows:



**570.208-1 General.**

(b) Applicable certifications must be reviewed for compliance with regulations.

47. Section 570.208-3 is amended by adding paragraph (b)(5) to read as follows:

**570.208-3 Appraisal.**

(b) \* \* \*

(5) A lease entered into using expedited procedures in 570.3.

48. Section 570.208-5 is revised to read as follows:

**570.208-5 Responsibility determinations.**

(a) The contracting officer shall make a determination that the prospective offeror is responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination. When an offeror is found to be nonresponsible, the contracting officer shall make, sign and place in the contract file a determination of nonresponsibility which shall state the basis for the determination.

(b) In cases where the contracting officer has reason to question the offeror's financial ability to perform, a financial responsibility check may be requested from the Accounts Receivable Branch, Credit and Finance Section, Region 6.

(c) If a small business concern is found to be nonresponsible, the procedures at FAR 19.6 and GSAR 519.6 must be followed. All documents and reports supporting a determination of responsibility or nonresponsibility must be placed in the permanent lease file.

49. The heading for subpart 570.3 is revised to read as follows:

**Subpart 570.3—Expedited Procedures for Small Leases and Temporary Leases**

50. Sections 570.301, 570.302 and 570.303 are revised to read as follows:

**570.301 Definitions.**

*Small lease* means a lease for a block of space of 10,000 square feet or less that is awarded using the expedited procedures prescribed in this subpart.

*Expedited procedure* means the procedures prescribed in this subpart for making small leases and temporary leases using a simplified process and a short form lease contract.

*Temporary lease* means a lease for a period of 6 months or less that is awarded using the expedited procedures in this subpart.

**570.302 Purpose.**

The purpose of this subpart is to prescribe expedited procedures for small leases and temporary leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

**570.303 Policy.**

Expedited procedures should be used to the maximum extent practicable for acquiring leasehold interests in real property involving blocks of space of 10,000 square feet or less when existing office or warehouse space will meet the Government's needs with minimum build-out and space preparation. Expedited procedures shall not be used for buildings to be constructed. Generally, the procedures are not suitable for space requiring extensive build-out, alterations, or renovations (e.g. space being converted from one use to another). However, contracting officers may, on a case-by-case basis, use the procedures for leases in existing buildings for space requiring a lesser degree of build-out, alterations, or renovations. Additionally, expedited procedures should be used, regardless of the square footage, when the need for the space is temporary (6 months or less) such as when space is needed by an agency in order to provide support during domestic or national emergency.

51. Section 570.304 is revised to read as follows:

**570.304 Procedures.**

The procedures in this Subpart 570.3 shall be used instead of the procedures in 570.2 if a small or temporary lease is involved and the use of expedited procedures is appropriate.

52. Section 570.304-1 is amended by revising paragraph (b) to read as follows:

**570.304-1 General.**

(b) A lease executed using expedited procedures and forms is not subject to pre-award contract clearance or legal review if the lease would normally be subject to such requirements based on the size and value.

53. Section 570.304-2, 570.304-3, 570.304-4 and 570.304-5 are revised to read as follows:

**570.304-2 Market survey.**

A market survey must be conducted in accordance with 570.201. The market survey is a crucial aspect of the expedited procedure.

**570.304-3 Advertising.**

Small lease requirements may be publicized in local newspapers and/or

periodicals when the contracting officer determines such advertising will serve to promote competition. For temporary leases and other advertising requirements, refer to 570.202, part 505 and FAR part 5.

**570.304-4 Soliciting offers.**

(a) If circumstances exist that support the use of other than competitive procedures, a justification must be prepared and approved if the lease will exceed \$25,000. For actions of \$25,000 or less the file must be documented with an explanation for the lack of competition. (See FAR Part 6 and GSAR 506).

(b) When the lease is not expected to exceed \$25,000, the solicitation of at least three sources may be considered to promote competition to the maximum extent practical. When repeated requirements for space occur in the same market, and if practicable, two sources not included in the most recent solicitation should be invited to submit offers.

(c) Offers will be solicited by presenting each prospective offeror with a proposed short form lease which identifies all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and which states the relative importance the Government places on the evaluation factors or subfactors.

(d) The proposed lease must describe the Government's requirements and include, either in full text or by reference, applicable FAR provisions and contract clauses required by 570.203(a)(8) and applicable GSAR provisions and clauses.

(e) As a minimum, the following items should be reviewed with prospective offerors:

- (1) Measurement of space by net usable method and the amount of space offered;
- (2) Alterations or modifications, if any, to be made by the offeror as part of the rent;
- (3) Overtime rate (if needed);
- (4) Level and frequency of service and maintenance;
- (5) Rental;
- (6) Rates for utility and service operating cost, if applicable;
- (7) Percentage of occupancy of the building, if a tax adjustment clause is included; and
- (8) Unit priced items (e.g., electrical and telephone outlets) if included in the lease.

(f) Following review, prospective offerors should be instructed to complete the appropriate sections of the lease and submit the proposed lease to



the Government by a designated time established for receipt of offers.

#### 570.304-5 Negotiation and award.

Offers shall be evaluated in accordance with the solicitation. The contracting officer shall evaluate the price using cost or price analysis and document the lease file to demonstrate that the proposed rental represents a fair market price. In cases where the total cost exceeds \$100,000, cost and pricing data must be obtained unless one of the exemptions at FAR 15.804-2 applies. The contracting officer may obtain an appraisal to support an exemption. An acceptable small business subcontracting plan must be provided if the lease will exceed \$500,000, unless the lease will be awarded to a small business concern. Negotiations, if applicable, shall be conducted in accordance with 570.205. For leases expected to exceed \$100,000, a Certificate of Procurement Integrity shall be provided to the proposed successful offeror for completion and submission before award. The contracting officer shall review the List of Parties Excluded from Procurement or Nonprocurement Programs, to ensure the proposed awardee is eligible to receive the award and is otherwise responsible before awarding the lease.

54. Section 570.502 is amended by revising paragraphs (a), (b)(1) and (b)(3)(i) to read as follows:

#### 570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition. Succeeding leases may not be used to replace temporary leases awarded using expedited procedures in 570.3.

(b) \* \* \*

(1) *Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals when blocks of space of more than 10,000 square feet are involved. The notice should normally:

(i) Indicate the Government's lease is expiring,

(ii) Describe the agency's needs in terms of type and quantity of space,

(iii) Indicate the Government is interested in considering alternative space if economically advantageous,

(iv) Advise prospective offerors that the Government will consider the cost of

moving, alterations, etc., when deciding whether it should relocate, and

(v) Provide a contact person for those interested in providing space to the Government.

(3) *Competition determination.* (i) If no potential acceptable locations are identified through the advertisement or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR subpart 6.3 and subpart 506.3, and should fully document the efforts to locate alternative sources.

55. Section 570.503 is amended by revising paragraphs (b) and (c) to read as follows:

#### 570.503 Expansion requests.

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement by relocation. A market survey must be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations that can satisfy the total requirement, a cost benefit analysis must be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location;

(2) The cost of moving;

(3) The cost of duplicating existing improvements;

(4) The cost of the unexpired portion of the firm lease term (unless a termination is possible, in which case the actual cost of such an action should be used); and

(5) The cost of disruption to the agency's operation.

(c) Unless competitive procedures are used to acquire the expansion space, a justification must be prepared for approval in accordance with FAR subpart 6.3 and subpart 506.3. When the cost is \$25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

56. Section 570.504 is amended by revising paragraph (a) to read as follows:

#### 570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease that would replace the existing lease (unless

the existing lease is a temporary lease) when the changes or modification to the space contemplated are so numerous or detailed as to cause complications, or they would substantially change the present lease.

57. Section 570.602-2 is amended by revising paragraph (f)(3) to read as follows:

#### 570.602-2 Procedures.

(f) *Price Negotiations.* \* \* \*

(3) Negotiations must be documented by a price negotiation memorandum prepared in accordance with FAR 15.808(a).

58. Sections 570.701-1, 570.701-2, 570.701-3, 570.701-4, 570.701-5, 570.701-6, 570.702-1, 570.702-2, 570.702-3, 570.702-4, 570.702-6, 570.702-7, 570.702-8, 570.702-9, 570.702-10, 570.702-11, 570.702-12 are revised and section 570.702-5 is removed and reserved to read as follows:

#### 570.701-1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-1, Preparation of Offers, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.701-2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.701-3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of



space or for terms of 6 months or less regardless of the square footage.

#### 570.701-4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-4, Historic Preference, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months, when the market survey indicates that space is available in both historic and non-historic buildings. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.701-5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-5, Lease Award, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.701-6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-6, Parties to Execute Lease, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-10, Definitions, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage unless the clause at 552.270-28 is included in the lease, in which case, the definitions clause is mandatory.

#### 570.702-2 Subletting and assignment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-11, Subletting and Assignment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the

clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-3 Maintenance of building and premises—right of entry.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-12, Maintenance of Building and Premises—Right of Entry, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-4 Fire and casualty damage.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-13, Fire and Casualty Damage, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-5 [Reserved]

#### 570.702-6 Compliance with applicable law.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-15, Compliance with Applicable Law, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-7 Inspection—right of entry.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-16, Inspection—Right of Entry, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-17, Failure in Performance, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet

or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-9 Successors bound.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-18, Successors Bound, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-19, Alterations, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-2, Changes, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

59. Section 570.702-14 is revised to read as follows:

#### 570.702-14 Operating costs.

If operating cost escalation is necessary, the contracting officer may use the clause at 552.270-23, Operating Costs, or develop a different clause for solicitations and contracts for acquisitions of leasehold interests in real property. Because of the variations in circumstances and need to modify clause wording that may arise, no standard clause is prescribed. However, any clause developed by the contracting



officer must provide for a base to be established, provide for upward and downward adjustment, and specify the timeframe for and method of payment. Any clause developed by the contracting officer should be reviewed by assigned legal counsel.

60. Section 570.702-15 is revised to read as follows:

**570.702-15 Tax adjustment.**

If tax escalation is necessary the contracting officer may use the clause at 552.270-24, Tax Adjustment, or develop a different clause for solicitations and contracts for acquisitions of leasehold interests in real property. Because of the variations in circumstances and need to modify clause wording that may arise, no standard clause is prescribed. However, any clause developed by the contracting officer must provide for a base to be established, provide for upward and downward adjustment, and specify the timeframes for and method of payment. Any clause developed by the Contracting officer should be reviewed by assigned legal counsel.

61. Sections 570.702-16, 570.702-18, 570.702-19, and 570.702-21 are revised, and sections 570.702-17 and 570.702-20 are removed and reserved to read as follows:

**570.702-16 Adjustment for vacant premises.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-17 [Reserved.]**

**570.702-18 Delivery and condition.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-19 Default in delivery—time extensions.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-28, Default in Delivery—Time Extensions, in solicitations and contracts for leasehold

interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-20 [Reserved.]**

**570.702-21 Progressive occupancy.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

62. Sections 570.702-22, 570.702-23, 570.702-24, 570.702-25, 570.702-26, 570.702-27, 570.702-28, 570.702-29, 570.702-30, and 570.702-31 are added to read as follows:

**570.702-22 Measurement for payment.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-31, Measurement for Payment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-23 Effect of acceptance and occupancy.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-32, Effect of Acceptance and Occupancy, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-24 Default by lessor during the term.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-33, Default by Lessor During the Term, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months when the contracting officer determines that the clause would not substantially affect the marketability of the lease or the lessor's ability to obtain financing. Use of the

clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-25 Subordination, nondisturbance and attornment.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-34, Subordination, Nondisturbance and Attornment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-26 Statement of lease.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-35, Statement of Lease, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-27 Substitution of tenant agency.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-36, Substitution of Tenant Agency, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-28 No waiver.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-37, No Waiver, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

**570.702-29 Integrated agreement.**

The contracting officer shall insert a clause substantially the same as the clause at 552.270-38, Integrated Agreement, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet



or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-30 Mutuality of obligations.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-39, Mutuality of Obligation, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

#### 570.702-31 Asbestos and hazardous waste management.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-40, Asbestos and Hazardous Waste Management, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

63. Section 570.801 is revised to read as follows:

#### 570.801 Standard forms.

Standard Form 2, U.S. Government Lease for Real Property, should be used to award leases unless expedited procedures in 570.3 are used. The reference to the Standard Form 2-A in paragraph 7 should be deleted.

64. Section 570.802 is revised to read as follows:

#### 570.802 GSA forms.

(a) The GSA Form 3626, U.S. Government Lease for Real Property (Short Form), should be used to award leases when expedited leasing procedures in 570.3 are used.

(b) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases that involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, restoration settlements, and alterations.

(c) GSA Form 387, Analysis of Values Statement, should be completed whenever an appraisal is provided by in-house or contract appraiser.

(d) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offerors except when expedited leasing procedures in 570.3 are used.

(e) GSA Form 3516, Solicitation Provisions, may be included as a part of all solicitations for the acquisition of leasehold interests in real property

except for solicitations issued under the expedited leasing procedures in 570.3.

(f) GSA Form 3517, General Clauses, may be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property. The GSA Form 3517A, General Clauses (Acquisition of Leasehold Interests in Real Property Not to Exceed \$25,000) or the GSA Form 3517B, General Clauses (Acquisition of Leasehold Interests in Real Property over \$25,000 and 10,000 square feet or less or any lease not to exceed 6 months) may be included instead when using expedited leasing procedures.

(g) GSA Form 3518, Representations and Certifications, may be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property. The GSA Form 3518A, Representations and Certifications (Temporary and Small Acquisitions of Leasehold Interests in Real Property) may be included instead when using expedited leasing procedures.

Dated: August 12, 1992.

Richard H. Hopt III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-19796 Filed 8-20-92; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 107 and 171

[Docket HM-208]

RIN 2137-AB43

### Hazardous Materials Transportation Registration and Fee Assessment Program; Editorial Revisions and Response to Petitions for Reconsideration

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule; editorial revisions and response to petitions for reconsideration.

**SUMMARY:** On July 9, 1992, a final rule was published which established a national registration program for persons engaged in the offering for transportation and transportation of certain categories and quantities of hazardous materials in intrastate, interstate, or foreign commerce. This document corrects errors in the final rule and responds to petitions for reconsideration, providing regulatory relief.

**EFFECTIVE DATE:** August 31, 1992. However, immediate compliance is authorized.

#### FOR FURTHER INFORMATION CONTACT:

Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards (202) 366-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** A final rule was published July 9, 1992, under Docket HM-208 (57 FR 30620), to establish a national registration program, as mandated by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), for persons engaged in the offering for transportation and transportation of certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to annually file a registration statement with RSPA and pay an annual fee of \$300, \$250 of which is to fund a nationwide emergency response training and planning grant program for States, local governments, and Indian tribes and \$50 of which is to offset DOT processing costs. An initial filing deadline of August 31, 1992 was imposed for filing the registration statement and paying the fee.

In a clarification document published in the *Federal Register* on July 28, 1992 (57 FR 33416), RSPA corrected errors in a nationally-distributed instructional brochure, entitled "Hazardous Materials Registration Program—What you Need to Know." RSPA also provided a narrative discussion of who is subject to the new registration requirements.

RSPA has received a petition for reconsideration from the American Trucking Associations (ATA) requesting delays in implementation and enforcement dates. North American Transportation Consultants, Inc. (NATC) requested clarification on the requirement for motor carriers to carry a copy of the Certificate of Registration or another document bearing the registration number on board all transport vehicles. NATC inquired whether this meant the document should be carried on both the tractor and the trailer of a truck tractor transporting any hazardous material. NATC also suggested that RSPA allow the registration number to be displayed on the side of the truck or truck tractor door, similar to the display of the U.S. DOT ID number. RSPA's response is discussed in the following section-by-section review.



With regard to payment of the registration fee, registrants should be aware that late payment of the registration fee may result in the assessment of interest and administrative charges, which would accrue from the date when the fee was due and payable. In addition, a late-payment penalty of six percent may be charged on any fee which is more than 90 days past due when paid.

#### Section-by-Section Review

##### Section 107.601

As stated in the July 28, 1992 clarification document, RSPA has received hundreds of telephone calls from persons who are confused about paragraphs (d) and (e). In this document, RSPA is editorially revising paragraphs (d) and (e) for clarity.

In paragraph (d), RSPA is adding a reference to the § 171.8 definition of "bulk packaging". The phrases "for liquids or gases" and "for solids" are added to clarify that capacities indicated in liters and gallons are for packagings intended for liquids and gases, and capacities indicated in cubic meters and cubic feet are for packagings intended for solid materials. Also, in paragraph (d), the wording "container, or tank" is removed. The final rule mirrored the HMTUSA statutory language, which contained the wording "bulk package, container, or tank". However, this wording has prompted inquiries as to whether "bulk" applies to "container, or tank" as well as "packaging". RSPA is removing the wording "container, or tank" to alleviate confusion, but interprets "bulk packaging" to include those vehicles, containers and tanks which have been modified to function as bulk packagings.

As stated in the July 28, 1992 clarification document, paragraphs (d) and (e) of § 107.601 are separate provisions. This amendment clarifies that paragraph (e) applies only to non-bulk shipments until July 1, 1993. A correction is made in the first sentence of paragraph (e) to describe 2268 kg as the metric equivalent of 5,000 pounds. The last sentence of paragraph (e) is revised to clarify the meaning of the term "shipment".

Revised paragraph (e) also places more emphasis on consistency with the placarding requirements in subpart F of 49 CFR part 172. For purposes of registration, those placarding requirements prevail over any intrastate placarding exemptions provided by State or local law. Therefore, if an intrastate offeror or transporter engages in any of the activities described in § 107.601(e), that person must register,

even if not subject to placarding requirements under State or local law.

##### Section 107.620

In order to meet the Congressionally-mandated October 1, 1992, deadline for funding the public sector grant program for emergency response planning and training, RSPA is not delaying the August 31, 1992 initial filing deadline beyond the special circumstances recognized in the final rule. However, to reduce any potential burden on the trucking industry, RSPA is delaying until January 1, 1993, the requirement for motor carriers to carry proof of registration on their vehicles. This delay does not affect the August 31, 1992, compliance date for motor carriers to register and maintain a copy of the Certificate of Registration at their principal place of business.

RSPA is replacing the wording "all transport vehicles" with "each truck and truck tractor (not including trailers and semi-trailers)" to clarify that carrying proof of registration is not necessary on full and semi-trailers. In addition, paragraph (b) is revised by removing the wording "or shipments of hazardous materials" in the first sentence to clarify that only those categories or quantities of hazardous materials subject to the registration requirements are subject to the requirements of this paragraph. However, RSPA is not expanding the provisions of § 107.620(b) to allow the display of the registration identification number on the sides of trucks and truck tractors. The display of the registration identification number on the side of the vehicle would create potential confusion with the U.S. DOT identification number prescribed in section 390.21 of the Federal Motor Carrier Safety Regulations. RSPA intends to issue each registrant a different registration identification number each year, which could result in additional confusion if the registration identification number was displayed on the side of the vehicle.

##### Section 171.2

Paragraph (b) is editorially revised to remove the wording "for transportation" because it is redundant.

#### Rulemaking Analyses and Notices

##### A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be "non-significant"

because it clarifies and corrects provisions of the final rule and provides consistency. This final rule does not impose additional requirements and, in fact, grants relief to some persons subject to the rule. The net result is that costs imposed under the final rule published in the Federal Register on July 9, 1992 are reduced, but without a reduction in safety (57 FR 30620). The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule provide limited relief and thus will result in minimal economic impact on industry.

##### B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under the HMTA, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Therefore, preparation of a Federalism Assessment is not warranted.

##### C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The rule will have no direct impact on small units of government.

##### D. Paperwork Reduction Act

Under 49 App. U.S.C. 1805, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this rule.

##### E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number



contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and does not require an environmental impact statement.

#### List of Subjects

##### 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

##### 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107 and 171 are amended as follows:

#### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1802, 1804, 1805, 1806, 1808-1811, 1815; Public Law 89-670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. In § 107.601, paragraphs (d) and (e) are revised to read as follows:

##### § 107.601 Applicability.

(d) A hazardous material in a bulk packaging (see § 171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

(e) A shipment of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter. Prior to July 1, 1993, this paragraph (e) provision applies only to hazardous materials in non-bulk packagings. For applicability of this subpart, the term "shipment" means, and is further limited to, the hazardous material being offered or loaded at one loading facility.

##### § 107.601 [Amended]

3. In addition, in § 107.601, in the introductory text, the word "transport" is revised to read "transportation".

4. In § 107.620, paragraph (b) is revised to read as follows:

##### § 107.620 Recordkeeping requirements.

(b) After January 1, 1993, each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

#### PART 171—GENERAL INFORMATION REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR part 1.

##### § 171.2 [Amended]

6. In § 171.2, in paragraph (b), the words "for transportation" are removed.

Issued in Washington, DC, on August 14, 1992, under the authority delegated in 49 CFR part 1.

Douglas B. Ham,  
Acting Administrator, Research and Special  
Programs Administration.

[FR Doc. 92-19808 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-60-M

#### National Highway Traffic Safety Administration

##### 49 CFR Part 571

[Docket No. 85-07; Notice 7]

RIN 2127-AD27

#### Federal Motor Vehicle Safety Standards; Air Brake Systems Control Line Pressure Balance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends the pneumatic timing requirements of Standard No. 121, Air Brake Systems, with respect to the control line pressure balance. Specifically, the agency is adopting a new dynamic test procedure for determining the control signal pressure differential. These amendments are part of a more general rulemaking to improve the brake timing balance of

combination vehicles and partially implement the mandate in section 4012 of the Intermodal Surface Transportation Efficiency Act (ISTEA) regarding rulemaking for "improving brake compatibility [and] effectiveness of brake timing."

DATES: *Effective Date:* The amendments become effective on August 23, 1993. Vehicles manufactured before the effective date may comply with this rule's amendments, effective September 21, 1992.

*Petitions for Reconsideration:* Any petitions for reconsideration of this rule must be received by NHTSA no later than September 21, 1992.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 85-07; Notice 7 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5274).

#### SUPPLEMENTARY INFORMATION:

##### Background

Pneumatic timing is an important factor in air brake system performance. The time required for a vehicle's service brake chambers to reach a relatively high pressure level after actuation of the brake control by the driver is referred to as "pneumatic application time." Since the generation of braking force is directly related to the air pressure available in the brake chambers, pneumatic application time affects vehicle stopping distance. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance.

The pneumatic application timing can affect the stability of combination vehicles. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. If the brakes are applied during a turn, this force may reduce the stability of the combination and contribute to a jackknife accident.

Braking performance is also affected by "pneumatic release timing" (i.e., the time required for the pressure in the brake chambers to fall from a relatively high pressure to a relatively low pressure after the driver releases the brake control.) If a vehicle's wheels lock as the driver is attempting to stop, the



vehicle will skid. The driver must be able to release the brakes immediately to regain control of the vehicle in this situation.

For combination vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin.

Standard No. 121, *Air Brake Systems*, currently specifies certain requirements for pneumatic timing. Section S5.3.3 specifies time periods within which brake actuation for trucks, buses, and trailers must occur. Similarly, section S5.3.4 specifies time periods within which brake release for these vehicles must occur.

The timing tests for trailers, including trailer converter dollies, are conducted with the trailer connected to a test rig rather than an actual tractor. The test rig delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir connected to the rear control line coupling. This reservoir represents the control line volume of the towed trailer.

#### Regulatory Background

On May 3, 1989, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to improve the timing balance of combination vehicles (54 FR 13890).

#### SNPRM I

On that same day, NHTSA published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing two further amendments concerning pneumatic timing (54 FR 18912). The first proposal would have required the actuation time at the gladhand to be at least as fast as the timing at the brake chambers. However, after reviewing the comments on this issue, NHTSA decided to terminate this portion of the rulemaking because the proposed requirement would have reduced flexibility in product manufacturing by requiring more custom design of vehicles. In addition, the costs resulting from such a requirement would not have been justified in view of the relatively limited safety benefits associated with such a requirement.

The second proposal would have required that the relay booster valves used on towing trailers not upset the brake balance of combination vehicles. The second proposal was intended to allay NHTSA's concern about excessive control line pressure differentials in multiple trailer combinations. Another concern was that pressure differentials,

which could be caused by relay booster valves with overly high crack pressures (i.e., the pressure at which a booster relay valve opens), could create situations in which the brakes of only the towing trailer were actuated. For example, if the crack pressure were too high, the relay booster valve would not open during mild braking, and the brakes of the towed trailer would not be actuated.

NHTSA proposed to require that, in all situations in which the pressure at the input coupling is steady (or is increasing or decreasing at a rate of 10 psi per minute or less), the pressure differential between the control line gladhand at the front of a towing trailer and the control line gladhand at the rear of the trailer not exceed 1.0 psi at input pressures between 5.0 and 20.0 psi, and not exceed 2.0 psi at input pressures above 20.0 psi. The agency believed that the requirement would ensure that the brakes of both the towing trailer and the towed trailer would receive the same signal.

#### SNPRM II

After reviewing the comments to the first SNPRM, the agency published a second supplemental notice of proposed rulemaking (SNPRM) on March 15, 1991. (56 FR 11150). As mentioned above, the agency decided to terminate the portion of the rulemaking about gladhand actuation timing. As for the proposal about control line pressure differential, NHTSA decided to propose modified requirements.

The commenters generally agreed in theory that control line pressure differential should be controlled. However, commenters stated that the proposed requirements were inappropriate. Bendix Heavy Vehicle Systems Group (Bendix) stated that the proposed 10 psi per minute rate of pressure change was extremely slow and would be difficult to maintain over a wide pressure range. Bendix also stated that the proposed rate was not representative of normal pressure changes that occur during braking.

Bendix suggested an alternative test procedure using two specific test orifices with fixed diameters and thickness to control flow rates. Bendix recommended that the test orifice sizes be set at 0.0180 inches diameter for application timing and 0.0292 inches diameter for release timing. Bendix believed that these diameters would produce brake pressure rates that are consistent with lower limit applications, such as those required for maintaining vehicle speed on a five percent grade. Bendix recommended four psi per second for application and release testing, a rate

substantially faster than the one proposed by NHTSA in the first SNPRM, but closer to rates seen in actual service applications. Bendix also suggested that the testing procedure for determining the control signal pressure differential on towing trailers and dollies use either of the current Standard No. 121 trailer test rigs and an orifice fixture, coupled between the control line gladhand of the trailer test rig and the control line input coupling of the vehicle to be tested.

After reviewing Bendix's suggested pressure differential test, NHTSA decided to propose a simplified test procedure that would use only one metering orifice, i.e., the smaller of the two orifices suggested by Bendix. While Bendix claimed that the use of two orifices would result in the same pressure change rate for both apply and release, NHTSA did not believe that monitoring the same pressure change rate was necessary. The agency believed that using one rather than two orifices would avoid the very fast or very slow pressure rate rises that could be problematic. NHTSA anticipated that the apply rate would approximate four psi per second, but the release rate would be somewhat slower.

The second SNPRM explained that the proposed pressure differential test slowly "sweeps" the pressure across the full range of operating pressures, thus enabling the person conducting the test to check the differential level. The orifice restricts the flow from the trailer test rig and slows the pressure rise and decay rate. The ability to "sweep" the pressure slowly makes it unnecessary to stop and hold the pressure constant. If the pressure is changed too rapidly, the steady state case (i.e., when brake pressure is being held steady after application of the brakes) is not evaluated and pressure differentials caused by air flow through the control lines, instead of valve characteristics, are introduced.

NHTSA tentatively concluded that the proposal concerning control line pressure differential was necessary to meet the need for motor vehicle safety. NHTSA believed that some trailer manufacturers would install relay valves at the rear of the trailers in the control lines upstream of the towing gladhands to "boost" the control signal. This would result in a significant margin of compliance with the new brake timing requirements for towing trailers established by NHTSA in the May 3, 1989 final rule.

In response to the second SNPRM, the agency received four comments. They were submitted by Midland-Grau, Bendix Heavy Vehicle Systems, the



Truck Trailer Manufacturers Association (TTMA), and Mr. Robert Crail, a consultant. The agency has considered the points raised in the comments in developing this final rule. The commenters' significant points are addressed below, along with the agency's response to the comments.

#### Agency's Determination

##### 1. Safety Need

Midland-Grau questioned the safety need for the proposal, stating that "Since there is no identified relationship between the control line pressure and brake force exerted, there appears to be no justification for the great efforts needed to achieve tightly tracking control line pressures."

NHTSA agrees with Midland-Grau that there is no absolute relationship between control line pressure and brake force. Nevertheless, by ensuring that the pressures will be constant as they are passed to other vehicles in combinations, this rulemaking will alleviate one significant source of combination vehicle brake imbalance. Therefore, the commenter's concern about the nonexistence of such a relationship has no bearing on the imbalance problem.

NHTSA notes that this rulemaking action to add requirements for control line pressure balance was intended to be a small but important part of the general rulemaking package regarding timing changes. (See, docket No. 85-07; Notice 3.) Therefore, in determining the safety benefits derived from the control line pressure amendment, the safety benefits obtained from the more general timing amendments should be considered to some extent. The agency continues to believe that the amendment about control line pressure should be adopted because, without this provision, an imbalance problem could exist if a manufacturer installed relay booster valves which speeded up the timing to meet the new timing requirements.

The amendment is designed to ensure that the control signal "passes" through a towing trailer or dolly without being altered along the way. Because the control signal passes through unaltered, each vehicle in the combination unit receives the same brake control signal (i.e., by keeping the control signal at the same level, each vehicle in a combination has a comparable braking performance). The agency acknowledges that Standard No. 121 does not specifically address brake force as a function of control pressure.

Nevertheless, the Society of Automotive Engineers (SAE) developed SAE Recommended Practice J1854 and Test

Procedure J1505 to allay concerns about incompatibility. The agency believes that this rulemaking will act in conjunction with SAE J1854 to improve compatibility between vehicles.

##### 2. Test Procedure

The second SNPRM proposed a dynamic test procedure in which pressure differential is evaluated using a single metering orifice. TTMA and Mr. Crail favored a test procedure measuring static conditions. TTMA believed that such a test procedure would be more similar to actual braking and would be less costly.

Notwithstanding these comments, the agency favors a dynamic test procedure which slowly sweeps across the full range of pressures. The agency notes that NHTSA's Vehicle Research and Test Center (VRTC) conducted tests which indicated that the proposed dynamic test appropriately evaluated control pressure differential. These tests were designed to measure the control line pressure valve's influence on the control line pressure to ensure that the pressure is not amplified. When such pressure is amplified, the pressure may not properly "bleed" back to the stable level, and thus adversely affect the timing among vehicles in a combination. The testing compared the pressure between the gladhand at the front of a towing trailer and the gladhand at the rear. The agency does not believe that the pressure differential problem which may arise through increased use of relay booster valves can be controlled with a static pressure test. Performing the necessary testing is technologically sensitive because the pressure between the gladhand in front of a towing trailer must be compared with the pressure at the rear gladhand. Given that the test sequence of events between the front gladhand and the rear gladhand occurs very rapidly and at pressure differentials too small for human observers to record the event accurately, the devices recommended by some commenters would be incapable of measuring such an intricate situation.

Mr. Crail commented that tolerances are needed in the test requirements, claiming that it is impossible to measure pressure exactly. He indicated that pressure accuracy within a range of  $\pm 0.25$  psi would be appropriate.

NHTSA notes that the agency generally does not specify tolerances in a requirement since a minimum or maximum value does not need a tolerance. The test values specified in the changes, as adopted, are one-sided maximum specifications in that the pressure differential from 5 to 20 psi cannot exceed 1 psi and at pressures

over 20 psi cannot exceed 2 psi. Accordingly, the agency has determined that tolerances in the specified pressures are not necessary.

##### 3. Cost

TTMA and Mr. Crail believed that the amendment's costs would be excessive. TTMA was concerned that the proposed test procedure would require trailer manufacturers to purchase expensive equipment such as transducers and recording equipment costing as much as \$6,000. In contrast, it claimed that the equipment necessary for the static test procedure it favors would cost about \$300 per manufacturer. Mr. Crail stated that the total cost of the static test would be less than \$900, as compared to approximately \$6,000 to conduct the test proposed by the agency. Similarly, Midland-Grau stated that the proposed requirements were impractical and unjustifiable.

After conducting its own review, NHTSA believes that the costs associated with the test equipment are reasonable and well below the costs estimated by the commenters. The agency notes that most trailer manufacturers already own the most expensive portion of this test equipment for conducting timing tests (i.e., the data recorder/power supply/signal conditioning apparatus), and that the mini-tractor test rigs that are currently used in compliance testing with Standard No. 121 could be readily upgraded to check for pressure differentials for an additional cost of \$300. Of this cost figure, \$100 would cover the hose, gladhands, and air flow restrictor and \$200 would cover the cost of upgrading the software of the test rig. NHTSA notes that the practical effects of these requirements are limited to only those trailer manufacturers who build towing trailers (i.e., trailers used in doubles or triples operations.) Such towing trailers currently constitute a very small percentage of the trailer market.

##### 4. Effective Date

The NPRM proposed an effective date of one year after the final rule's publication. Bendix requested that the rule become effective as soon as possible, claiming that this would limit the number of vehicles designed to comply with Notice 3 that would have an undesirable control pressure differential.

After reviewing the comments, the agency believes that optional compliance with the control pressure differential amendments should be permitted beginning 30 days after the



final rule's publication. The agency believes that allowing earlier optional compliance will reduce the number of vehicles that may be built with excessive pressure differentials. Mandatory compliance will still be effective one year after publication of the final rule.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### Rulemaking Analyses and Notices

##### *Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The agency has considered the costs and other impacts of this rulemaking and determined that the rulemaking is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. As discussed above, the requirements necessitate only minor additional changes to vehicles beyond those required by the final rule published on May 3, 1989.

Manufacturers may have to use higher quality (tighter tolerance) relay valves to meet the requirements. However, these tighter tolerance valves are not significantly more expensive. Manufacturers may have to modify existing valve designs to control pressure differential and also change diaphragm ratios. However, these modified valves are not significantly more expensive and are estimated to cost approximately \$3-4 more per vehicle. In addition, the requirements could add approximately five minutes to the timing test, which could increase the cost as much as \$4.00 per vehicle. NHTSA believes that most, if not all, manufacturers routinely test each vehicle for compliance with pneumatic requirements. The agency estimates that approximately 21,400 towing trailers are

manufactured each year. If all towing trailers required modification and testing the cost of meeting these new requirements could approach \$170,000. However, the agency believes that the actual costs will be lower because many of the units built already comply with the requirements. NHTSA estimates additional costs associated with this rule will be less than the May 3, 1989 final rule, which was neither major nor significant. The final regulatory evaluation for that final rule is available in the docket for that rulemaking.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation and the discussion above, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The effect of this rulemaking on any small manufacturers of vehicles or brake systems will be minor. Only minor additional changes to vehicles beyond those necessitated by the final rule published on May 3, 1989 will be needed. Other small businesses, small organizations, and small governmental units will be affected by the amendments only to the extent that they purchase motor vehicles. The amendments will not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

#### Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### National Environmental Policy Act

Finally, the agency has also analyzed this rulemaking for the purposes of the National Environmental Policy Act. NHTSA has determined that the rule will not have any significant impact on the quality of the human environment.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Rubber and rubber products, Tires.

#### PART 571—[AMENDED]

In consideration of the foregoing, 49

CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

#### § 571.121 [Amended]

2. S5.3.5 is added to § 571.121 to read as follows:

*S5.3.5 Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.*

(a) For a trailer manufactured on or after August 23, 1993, and designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a)(1) and (2) under the conditions specified in S5.3.5(b)(1) through (4)—

(1) 1 p.s.i. at all input pressures equal to or greater than 5 p.s.i., but not greater than 20 p.s.i.; and

(2) 2 p.s.i. at all input pressures greater than 20 p.s.i.

(b) The requirements in S5.3.5(a) shall be met—

(1) When the pressure at the input coupling is steady, increasing or decreasing;

(2) When air is applied to or released from the control line input coupling using the trailer test rig shown in Figure 1;

(3) With a fixed orifice consisting of a 0.0180 inch diameter hole (no. 77 drill bit) in a 0.032 inch thick disc installed in the control line between the trailer test rig coupling and the vehicle's control line input coupling; and

(4) Operating the trailer test rig in the same manner and under the same conditions as it is operated during testing to measure brake actuation and release times, as specified in S5.3.3 and S5.3.4, except for the installation of the orifice in the control line to restrict airflow rate.

Issued on August 18, 1992.

Howard M. Smolkin,  
Executive Director.

[FR Doc. 92-19988 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-59-M



## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric

## Administration

## 50 CFR Part 661

[Docket No. 920412-2112]

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Inseason adjustments and closure.

**SUMMARY:** NMFS announces that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, will open for what is expected to be the final fishing period, for 3 days on August 12-14, 1992, with a possession and landing limit of 44 coho salmon. The Director, Northwest Region, NMFS (Regional Director), has determined that, following this fishery's fourth open period on August 6-8, 1992, a sufficient number of coho salmon remain in the harvest guideline to allow a final 3-day open period. These adjustments are intended to provide sufficient time to catch the remainder of the coho harvest guideline without exceeding the ocean share allocated to the commercial fishery in this subarea. The closure is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

**DATES:** The opening and the possession and landing limits for coho salmon are effective at 0001 hours local time, August 12, 1992, through 2400 hours local time, August 14, 1992. Closure is effective 2400 hours local time, August 14, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through September 8, 1992.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700—Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526-6140.

**SUPPLEMENTARY INFORMATION:** In its emergency interim rule and notice of

1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest guidelines of either 18,100 coho salmon or 4,400 chinook salmon. These harvest guidelines have since been revised to be 17,600 coho salmon and 9,700 chinook salmon.

Preseason restrictions for the July/August commercial fishery included a cycle of 2 days open and 3 days closed, a possession and landing limit of 30 coho salmon per opening, and gear limited to 6-inch plugs or larger and no more than 4 spreads per line. Inseason actions were taken such that this fishery's second, third, and fourth open periods were for 3 days each.

Based on the best available information on August 10, the commercial catch in the subarea from the U.S.-Canada border to Cape Falcon during the four open periods totaled about 13,800 coho salmon and about 7,500 chinook salmon, and the remainder of the coho salmon harvest guideline is projected to be harvested during a final 3-day fishing period with an appropriate adjustment to the possession and landing limit. Therefore, the commercial fishery in the subarea from the U.S.-Canada border to Cape Falcon will open for 3 days, effective 0001 hours local time, August 12 through 2400 hours local time, August 14, 1992. Each vessel may possess, land and deliver not more than 44 coho salmon for this open period. Modifications of fishing seasons and limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1) (i) and (ii).

Announcements to affected fishermen stated that following this 3-day open period, the commercial fishery in this subarea would close for 5 days on August 15-19, 1992, for further evaluation. However, it is anticipated that the harvest guideline for coho salmon will be fully harvested during this opening, and that an insufficient number of fish will be available for another opening. Unlike fisheries managed under quotas that require closure upon the projected attainment of the quota, fisheries managed under harvest guidelines do not require closure upon the projected attainment of the guideline. However, it was determined that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, would be managed to keep catches near the guideline levels. Therefore, the commercial fishery in this subarea is closed effective 2400 hours local time, August 14, 1992. Closure of

this fishery as authorized by regulations at 50 CFR 661.21(b)(1)(i).

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 12, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these adjustments affecting the commercial fishery between the U.S.-Canada border and Cape Falcon. The states of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. However, public comments on this notice will be accepted through September 8, 1992.

## Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

## List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** August 17, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-19971 Filed 8-20-92; 8:45 am]

**BILLING CODE 3510-22-M**

## 50 CFR Parts 672 and 675

[Docket No. 910783-2025]

RIN 0648-AD45

## Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that prohibits use of longline pot gear in the groundfish fisheries of the Bering Sea



and Aleutian Islands (BSAI), except the Aleutian Islands subarea, and all groundfish fisheries of the Gulf of Alaska (GOA). This action is necessary to prevent gear conflicts and ground preemptions that would otherwise occur between longline pots and other gear types, especially as the use of pots increases in the groundfish fisheries. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

**DATES:** Effective September 21, 1992.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and BSAI area are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plans for Groundfish of the Gulf of Alaska (GOA FMP) and the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI FMP). The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fisheries appearing at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675.

At times, amendments to the FMPs and/or their implementing regulations are necessary to resolve problems pertaining to management of the groundfish fisheries. The structure of both groundfish FMPs provides for changes to gear restrictions by amending regulations (regulatory amendments) without accompanying amendments to the FMPs (sections 14.5.1 in the GOA FMP and 14.4.4 in the BSAI FMP).

NMFS published a proposed rule in the *Federal Register* (56 FR 51669; October 15, 1991), which described in detail the basis for the action. The final rule prohibits the use of longline pot gear in the groundfish fisheries of the BSAI, except the Aleutian Islands subarea, and all groundfish fisheries of the GOA. Also, regulations at § 672.24(c)(2) are simplified by removing

the reference to restrictions after 1988, because they serve no purpose. An incorrect citation in § 672.24(c)(1) is changed from (b)(3)(ii) to (c)(3)(ii). The final rule does not differ substantially from the proposed rule.

**Response to Comments**

Four letters of comments were received during the comment period. Comments are summarized and responded to as follows:

**Comment 1:** The use of longline pot gear preempts fishing grounds and causes gear conflicts with hook-and-line gear and trawl gear. These problems are reduced when single line pot gear is used, because hook-and-line gear and trawl gear can be deployed between pots.

**Response:** NMFS concurs. Based on testimony to the Council by fishermen already using pot gear, groundfish harvests with single line pots will continue and will replace harvests that might otherwise have resulted from the use of longline pot gear. Prohibiting longline pot gear will reduce ground preemptions and gear conflicts without significant economic loss to the fishing industry.

**Comment 2:** The use of longline pot gear should not be singled out to be prohibited; single line pot gear also should be prohibited.

**Response:** NMFS recognizes that while any stationary gear type might result in ground preemptions and gear conflicts with itself and other authorized gear types, expanding the scope of this rule is not appropriate. This rule, and its supporting analysis, are directed only at the use of longline pot gear. If future management problems arise with other gear types, including single line pots, the Council or NMFS could initiate regulatory action to address the problem.

**Comment 3:** Prohibiting longline pot gear while the groundfish fisheries are still developing is myopic. The use of longline pot gear would provide future solutions to economic problems, including those related to bycatch management, and environmental problems.

**Response:** The decision to prohibit longline pot gear is intended to resolve problems related to ground preemptions and gear conflicts that would otherwise be expected if the use of longline pot gear were to increase. Most of the testimony presented to the Council came from participants in the industry, including some fishermen who use pot gear, who were concerned with future problems stemming from expanded use of longline pot gear. NMFS believes that

prohibiting the growing use of pot gear is a reasonable solution to the problems.

**Comment 4:** The use of the term pot-and-longline gear that was used in proposed rulemaking is confusing to the industry. The term longline pot gear should be used instead.

**Response:** NMFS concurs. Definitions of pot-and-longline gear in 50 CFR 672.2 and 675.2 are rescinded and new definitions of longline pot gear are added using the same meaning as pot-and-longline gear.

**Changes From the Proposed Rule**

Definitions of "pot-and-longline" at 50 CFR 672.2 and 675.2 are removed and new definitions of "longline pot" are added using the same meanings as for "pot-and-longline."

**Classification**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and the Assistant Administrator concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **ADDRESSES**).

The final regulatory flexibility analysis prepared as part of the EA/RIR/FRFA concluded that this rule would have significant effects on small entities. A summary of this analysis is contained in the Classification section of the proposed rulemaking (56 FR 51669; October 15, 1991).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/FRFA prepared by the Alaska Region, NMFS.

This rule does not include a collection of information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The responsible State agencies did not reply within the statutory time period;



therefore, consistency is automatically inferred.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

#### List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: August 14, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

#### PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definition of "pot-and-longline" is removed and a new definition of "longline pot" gear is added in alphabetical order to read as follows:

##### § 672.2 Definitions.

*Longline pot* means a stationary, buoyed, and anchored line with two or

more pots attached, or the taking of fish by means of such a device.

3. In § 672.24, paragraphs (c)(1) and (c)(2) are revised and (c)(4) is added to read as follows:

##### § 672.24 Gear limitations.

(c) \* \* \*

(1) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When operators of vessels using trawl gear have harvested 5 percent of the TAC for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (c)(3)(ii) of this section. Operators of vessels using gear types other than those specified above in the Eastern Regulatory Area must treat any catch of sablefish as a prohibited species.

(2) *Central and Western Areas.* Hook-and-line gear may be used to take up to 80 percent of the sablefish TAC in each of the Central and Western areas, and trawl gear may be used to take up to 20 percent of the sablefish TACs in these areas. Operators of vessels using gear types other than hook-and-line and trawl gear in the Central and Western areas must treat any catch of sablefish in these areas as a prohibited species.

(4) Any person using longline pot gear must treat any catch of groundfish as a prohibited species.

#### PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.2, the definition of "pot-and-longline" is removed and a new definition of "longline pot" gear is added in alphabetical order to read as follows:

##### § 675.2 Definitions.

*Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

6. In § 675.24, paragraph (c)(3) is added to read as follows:

##### § 675.24 Gear limitations.

(c) \* \* \*

(3) Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except in the Aleutian Islands subarea.

[FR Doc. 92-19975 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 57, No. 163

Friday, August 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 125

#### Certificate of Competency (COC) Program

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation sets forth a complete revision of the Small Business Administration (SBA) COC Regulations, adding eligibility and appeals criteria as well as clarifying other administrative provisions. This action is necessary to reflect a number of changes in procurement law that have occurred since the last revision to the OCC regulations, including an amendment to the Small Business Act which incorporates prime contractor performance requirements (limitations of subcontracting). This proposed regulation would provide definitive guidelines for COC program eligibility and COC program procedures. This proposed regulation would also provide the contracting agency with definitive guidelines for appealing affirmative recommendations to issue a COC made by SBA Regional Offices. In addition, this proposed regulation would provide guidelines to be used in resolving differences between the SBA and the contracting agency. The regulation as proposed, presents SBA's current position on this matter. However, SBA may revise these procedures in light of comments received.

**DATES:** Written comments must be submitted on or before October 20, 1992.

**ADDRESSES:** Comments should be addressed to: Gene VanArsdale, Acting Director, Office of Industrial Assistance, Office of Procurement Assistance, Small Business Administration, 409 3d Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dean Koppel, Program Manager, Certificate of Competency Program, Office of Industrial Assistance, 202/205-6475.

**SUPPLEMENTARY INFORMATION:** Proposed Section 125.5(a), "COC Eligibility", has been revised for greater clarity. Proposed § 125.5(a) incorporates the provisions currently found at § 125.5 (a), (b) and (c), without making any substantive changes.

Under § 125.5(a)(ii), with the exception of solicitations requiring services or construction outside the United States, its trust territories, possessions or the Commonwealth of Puerto Rico, to be eligible for a COC a small business concern would be precluded from performing a significant portion of the contract and/or a majority of its subcontracting on a solicitation for supplies outside the United States, its trust territories, possessions or the Commonwealth of Puerto Rico. This condition would be imposed on solicitations for supplies due to the Agency's determination that award of the contract to a small business concern which would not perform the majority of its contract in the United States would not further the purposes of the Small Business Act.

13 CFR 125.5(a)(2) and § 125(a)(3) would give effort to debarments and suspensions under subpart 9.4 of the FAR, 48 CFR 9.4. Pursuant to paragraph (a)(2), if a small business concern, or any of its principals, is on the debarred or suspended bidders list (published monthly pursuant to the Office of Federal Procurement Policy Letter 82-1, dated June 24, 1982), it would be ineligible for purposes of a Certificate of Competency.

Procedural provisions currently found at § 125.5(b)-(g) would be revised and clarified in § 125.5(b). While the substance of all current provisions would be retained, other changes to the regulations would be made to incorporate new provisions of the language currently found at subpart 9.4 of the Federal Acquisition Regulation (FAR) (Debarment, Suspension and Ineligibility). These changes would give effect to the "Guidelines for Nonprocurement Debarment and Suspension" issued by the Office of Management and Budget, 52 FR 20360 (May 29, 1987), and to delineate what has been and is current practice in administering the COC program.

13 CFR 125.5(b)(5) affirms that the COC program extends to all elements of responsibility and eligibility and is not necessarily limited to a consideration of

the deficiencies found by the contracting officer.

Under § 125.5(b)(6), the Agency would presume a firm to be non-responsible in two cases. First, if the small business concern or any of its principals has either been convicted of an offense(s) and its case is still under the jurisdiction of a court or suffered a civil judgment within the past three years which would be grounds for debarment or suspension, the Agency would presume that the concern is non-responsible for lack of integrity. Convictions or civil judgments older than three years would be considered as evidence relevant to responsibility on a case-by-case basis, but would not give rise to the presumption. Second, a concern that is six months, or more, delinquent on a debt to the Federal Government would be presumed non-responsible for lack of financial capacity. This would recognize the underlying principal of the Non-Procurement Debarment and Suspension Guidelines and Executive Order 12549 upon which they are based, to exclude from participation in its programs individuals and entities who do not satisfy their financial obligation to the Federal Government.

13 CFR 125.5(b)(8) would make clear that SBA's Regional Offices have the authority to deny a COC regardless of the dollar value of the contract involved. It would also make clear that the decision to deny a COC at the Regional Office level is the final Agency action and there is no administrative appeal of that decision within SBA.

The proposed regulation would also include for the first time, procedures for appeal by contracting agencies of an initial determination by an SBA Regional Office to issue a COC. Appeal procedures are currently described in part 19 of the FAR (48 CFR 19.6). The proposed provisions would be included in § 125.5(b)(9). Under these proposed provisions, a contracting agency may appeal an SBA Regional Office's intended affirmative action to issue a COC. The intent of the appeal procedure would be to allow a Department or Agency an opportunity to provide new and additional information. Contract actions processed utilizing small purchase procedures would not be subject to the COC appeal process. In addition, COC's issued by the Associate Administrator for Procurement



Assistance would not be subject to the COC appeal process.

13 CFR 125.5(b)(15) is a new provision that identifies two circumstances where SBA would reserve the right to reconsider its determination to issue a COC where: (1) It acquires or develops new and materially adverse information regarding the responsibility of a small business concern after a COC has been issued, but prior to award of a contract which had been based on such COC, and (2) where the contracting agency had not awarded the contract within 60 days of issuance of the COC. In the first case, SBA believes it is its duty to reconsider a COC if, prior to award, it has acquired evidence that the company is not responsible, notwithstanding its original determination. In the second case, SBA is concerned that its COC would become stale due to the changed circumstances of the small business concern. In cases where this may be of concern, SBA would retain the right to reconsider its decision to issue a COC to assure itself that the company remains responsible. This provision does not grant the right to a small business concern denied a COC to request reconsideration of that decision.

13 CFR 125.5(c) adds new provisions to reflect the effect of amendments to section 15 of the Small Business Act, 15 U.S.C. 644. Under this new provision, a small business concern, to be responsible for award of a contract on a small business set-aside, would be required to perform with its own facilities and personnel, that portion of the contract now required by section 15 of the Small Business Act, as amended by section 921(c)(2) of the Defense Reauthorization Act of 1987, Pub. L. 99-661 1100 Stat. 3816, 15 U.S.C. 644(o). SBA is proposing these regulations with the intent of seeking public input in formulating its procedures in reference to Prime Contractor Performance Requirements. Prime Contractor Performance Requirements would now be considered responsibility issues and would not be considered as a small business size determination issue.

13 CFR 125.5(d) would incorporate the provisions currently found at § 125.5(i), relating to determinations under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35. Further, the provision would be amended to incorporate by reference the processing procedures now found in part 50-201.101(b) of title 41, Code of Federal Regulations, as promulgated by the Department of Labor, regarding contracting officer initiated and protest initiated (both before and after award) Walsh-Healey eligibility determinations.

13 CFR 125.5(e) would incorporate the provisions currently found at § 125.5(j).

This provision would implement the language found at section 8(b)(7)(c) of the Small Business Act, 15 U.S.C. 637(b)(7)(C), which requires procuring agencies and their contracting officers to award contracts to those companies to which SBA has issued a COC without requiring them to satisfy any other requirement with respect to responsibility or eligibility.

13 CFR 125.5(f) states that the contracting officer is not precluded from awarding a contract to a firm which has been denied a COC by the SBA.

**Compliance With Executive Orders 12291, 12612 and 12778, the Regulatory Flexibility Act (55 U.S.C. 601, et seq.) and the Paperwork Reduction Act (45 U.S.C. 601 Ch. 35)**

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 55 U.S.C. 601 et seq. SBA does not anticipate that a substantial number of small businesses will be excluded from a COC under these amended regulations, if adopted in final form. These amended regulations only reflect administrative changes.

For purposes of E.O. 12291, SBA certifies that this proposed rule, if promulgated in final, would not be a major rule because it is procedural in nature and is not likely to result in an annual economic effect of \$100 million or more, major increase in costs or a significant adverse effect on any segment of the economy.

This proposed regulation, if promulgated in final, would impose no new record keeping requirements and no new reporting requirements subject to the Paperwork Reduction Act 45 U.S.C. 601 Ch. 35.

For purposes of E.O. 12612, SBA certifies that this proposed rule, if promulgated in final, would not have federalism implications warranting the preparation of Federalism Assessment.

For purposes of E.O. 12778, SBA certifies that this proposed rule, if promulgated in final, would be drafted, to the extent practicable, in accordance with standards set forth in section 2 of that Order.

#### List of Subjects in 13 CFR Part 125

Certificate of competency;  
Government contracts; Government procurement; Small business;  
Procurement assistance.

#### PART 125—[AMENDED]

Accordingly, it is proposed that part 125 of Title 13, Code of Federal Regulations, be amended as follows:

1. The authority citation for part 125 is revised to read as follows:

Authority: Section 5(b)(6), 8 and 15 of the Small Business Act, 15 U.S.C. §§ 634(b)(6), 637, and 644, 31 U.S.C. 9701, 9702.

2. Section 125.5 is revised to read as follows:

#### § 125.5 Certificate of competency program.

The Certificate of Competency (COC) Program is authorized under section 8 (b)(7) of the Small Business Act, as amended. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small business concern (or a group of such concerns) named therein possesses the responsibility and/or Walsh-Healey eligibility to perform a specific Government procurement (or sale) contract.

(a) *COC eligibility.* (1) The contractor has the burden of proof to demonstrate eligibility. To be eligible for the COC program, a firm must meet the following criteria:

(i) It must qualify as a "small business concern" under the applicable size standard as set forth in part 121 of this title, for the SIC Code contained in the solicitation or supplied by SBA in accordance with § 121.902(d) of this title, or be a "group of such concerns" in the form of a small business Defense Production Pool and/or Research and Development Pool approved under the Small Business Act; see §§ 125.7 and 125.4(d)(2) of this title. For purposes of the Small Business Set Aside Program or Department of Defense Small Disadvantaged Business Program, size is determined as of the date of the concern's self certification submitted as part of its initial offer which includes price. For purposes of an unrestricted procurement or procurement for the sale of Government property, size is determined as of the date of the application for a COC.

(ii) Unless performance on a proposed contract is to be required outside the United States, or its trust territories, possessions, or the Commonwealth of Puerto Rico, the small business concern must perform a significant portion of a proposed contract for supplies (regardless of end item delivery destination), or a proposed contract for services or construction, within the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico with its own facilities and



personnel. Where performance is required outside the United States, or its territories, possessions, or the Commonwealth of Puerto Rico, for services or construction, in order to be eligible for a COC, the small business concern must demonstrate that it will perform a significant portion, as determined by SBA in its sole discretion, of the proposed contract with its own facilities and personnel.

(iii) If a small business non-manufacturer submits a bid or offer on a small business set-aside contract for supplies, it must furnish end items under the proposed contract which have been manufactured by a small business concern in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico, unless a non-manufacturing waiver has been granted under the provisions of § 121.906(b) of this title for either the type of product to be supplied generally or in connection with the specific requirement at issue. Any certification shall apply to the responsibility of the small non-manufacturer, not to that of the manufacturer.

(iv) If a small business non-manufacturer submits a bid or offer on an unrestricted procurement or a procurement utilizing small purchase procedures, it must furnish end items manufactured in the United States, or its trust territories, possessions, or the Commonwealth of Puerto Rico. Any certification shall apply to the responsibility of the small non-manufacturer, not to that of the manufacturer.

(v) If the small business concern intends to provide a kit consisting of finished components or other components provided for a special purpose, the concern is eligible if:

(A) It meets the Size Standard for the Standard Industrial Classification Code of the product acquired;

(B) More than 50% of the total dollar value of the components of the kit were manufactured by small business concerns under the size standard applicable to the component(s) provided. The offeror need not itself be the manufacturer of any of the components of the kit. Except for an insignificant portion from an overseas source, each component comprising the kit must be produced or manufactured in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico. Where the Government has specified an item(s) for the kit which is (are) not manufactured by a small business concern, then such item(s) shall be excluded from the determination of total value for the purposes of this subsection.

(2) A small business concern will not be eligible for a COC if the concern, or any of its principals, i.e. director, owner, partner, officer, key employee, or principal stockholder as defined in 13 CFR 121.401(e), appears in the "Parties Excluded From Federal Procurement Programs" section found in the U.S. General Services Administration Office of Acquisition Policy Publication: List of Parties Excluded From Federal Procurement of Nonprocurement Programs. If a principal is unable to presently control the applicant concern, and appears in the Procurement Section of the list due to matters not directly related to the concern itself, responsibility will be determined in accordance with § 125.5(b)(6) of this subsection.

(3) An eligibility determination will be made on a case by case basis, where a concern or any of its principals appears in the Nonprocurement Section of the publication referred to in § 125.5(a)(2) above.

(b) *Procedures.* (1) Government contracting officers engaged in procurement and/or the sale and disposal of Federal property, after completion of all negotiations, upon determining and documenting that a responsive small business concern which is the apparently successful bidder/offeror, in line for contract award lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, or perseverance and tenacity, shall provide written notification of such determination and refer the matter to the SBA Regional Office in the geographic area where the principal office of the concern is located. The referral from the contracting agency shall include 3 copies of the following: Solicitation (one of which will be a copy of the bid/offer tendered by the firm), Abstract of Bids (where applicable), the preaward survey, the contracting officer's written determination of non-responsibility, and any other justification and documentation used to arrive at the non-responsibility determination. Only one copy of the technical data package (drawings, specifications, Statement of Work, etc.) need be submitted by the contracting officer.

(2) Contract award will be withheld by the contracting officer for a period of 15 working days (or longer if agreed to by the SBA and the contracting officer) following receipt by the appropriate SBA Regional Office of a referral made by the contracting officer which includes all required documents.

(3) Upon receipt of the contracting officer's referral, the SBA Regional

Office will contact the small business concern to inform it of the contracting officer's negative responsibility determination, and to offer it the opportunity to appeal the determination by applying to SBA for a COC by a specified date. The COC application should include all information and documentation which the firm believes will demonstrate its ability to perform on the proposed contract. The application will be furnished as soon as possible, but no later than the date specified by SBA. Upon receipt of an acceptable application and documentation, SBA personnel may be sent to the applicant's facility to review its responsibility. Where a service or construction contract will be performed outside the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico, SBA will rely solely on documentation and other relevant information obtained within the United States. SBA personnel may obtain clarification or confirmation of information provided by the applicant by directly contacting suppliers, financial institutions and other third parties upon whom the applicant's responsibility depends.

(4) If the application and/or supporting documentation is materially incomplete or is not submitted by the date specified by SBA, the contracting officer will be notified that the case has been closed and the SBA has declined to issue a COC. The basis for such determination will be specified in a declination letter sent to both the concern and the contracting officer.

(5) The COC review process is not limited to the deficiencies cited by the contracting officer. SBA will, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but it may presume responsibility exists as to elements other than those cited as deficient. SBA may deny a COC for issues of responsibility not originally supplied by the contracting officer.

(6) A small business concern will be presumed non-responsible, unless it can rebut the presumption with information deemed sufficient by SBA, if any of the following circumstances are shown to exist:

(i) Within three years prior to the application for a COC the concern, or any of its principals, has been convicted of an offense or offenses that would constitute grounds for debarment or suspension under FAR 9.4, and the matter is still under the jurisdiction of a court, i.e., the principals of a concern are incarcerated, on probation, or under a suspended sentence; or



(ii) Within said 3 years the concern, or any of its principals, has had a civil judgment entered against them or it for any reason that would constitute grounds for debarment or suspension; or

(iii) The concern is six months or more delinquent on a debt due the Federal Government, unless a repayment plan has been submitted by the concern and accepted by the Government.

(7) Following review of the information submitted by the applicant small business concern and the information gathered by SBA personnel, the SBA Regional COC review Committee will make its recommendation on the application for the COC to the Regional Official with delegated authority to approve, recommend approval or deny COC applications.

(8) The Regional Office may deny a COC, regardless of the dollar value of the contract involved. Where the Regional Office denies the COC, it will notify in writing both the applicant and the contracting agency. The Regional Office's decision to deny a COC is the final Agency decision. There is no administrative appeal of that decision.

(9) The Regional Office may make an initial decision to determine a COC applicant to be responsible, in which case it will notify the contracting officer of its intention to issue a COC. At the time of notification, prior to issuance of a COC, the contracting officer will be given the following options:

(i) Accept the Regional Office's initial decision to issue the COC and award the contract to the company. The letter of issuance will include as an attachment a detailed rationale of the Regional Office's decision in each case; or

(ii) Ask SBA to place the case in suspense for a specified period of time and to forward a detailed rationale to the contracting officer outlining the reasons for SBA's initial decision; or

(iii) Ask SBA to place the case in suspense to afford the contracting officer the opportunity to meet with the Regional Office to review all documentation contained in the case file; or

(iv) Submit new information for the Regional Office's consideration. At that time, SBA will establish a new suspense date mutually agreeable to the contracting officer and SBA; or

(v) Ask SBA to place the case in suspense pending resolution of a possible formal appeal by the contracting agency to the SBA Central Office, unless the contract involved is a small purchase action as defined by section 4 (11) of the Office of Federal

Procurement Policy Act, 41 U.S.C. 403(11).

(10) Where the contract involved is such a small purchase action, following completion of any discussions pursuant to § 125.5(b)(9) above, the Regional Office will render a final decision. The decision of a Regional Office to issue or deny a COC for a small purchase action constitutes the final SBA decision in such cases.

(11) In the case of contracts other than such small purchases, and within the Regional Office's delegated authority, the Regional Office will render a final COC decision following completion of any discussions pursuant to § 125.5(b)(9) above, unless the contracting officer asks that the case be placed in suspense pending resolution of an intended formal appeal.

(12) Notices of intended appeals shall be filed by contracting officers with the Regional Office processing the COC application. The Regional Office shall accept the appeal, *Provided* the contracting officer agrees to withhold award until the formal appeal process is concluded. Without such an agreement from the contracting agency, the Regional Office shall issue the COC. When such an agreement has been obtained, the Regional Office shall immediately forward the case file to the SBA Central Office.

(i) The intent of the appeal procedure is to allow contracting agencies the opportunity to submit new documentation not previously available.

(ii) The SBA Central Office shall furnish written notice to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) at the secretariat level of the procuring agency, with a copy to the contracting officer, that the case file has been received and that a formal appeal decision may be requested by the contracting agency at the secretariat level or agency equivalent. If the contracting agency decides to seek such an appeal, it shall so notify the SBA Central Office through the Director, OSDBU within 10 working days (or a time period acceptable to both agencies) of its receipt of the notice under § 125.5(b)(9), above. Any materials or argument in support of the appeal must be filed within 10 working days (or a period of time agreed upon by both agencies) after SBA receives the request for a formal appeal. The SBA Associate Administrator for Procurement Assistance (AA/PA) will make a final determination in writing, issuing or denying the COC.

(13) For procurements in excess of the Regional Office's delegated authority to issue a COC, as specified in part 101.3-2 of these regulations, the Regional Office

shall refer its recommendation for issuance of the COC to the AA/PA, SBA Central Office. Prior to forwarding the case to the SBA Central Office, the Regional Office shall inform the contracting officer of its affirmative recommendation and supply the contracting officer with a detailed rationale outlining the reasons for the affirmative recommendation.

(i) Prior to taking final action, the SBA Central Office will contact the contracting agency at the secretariat level or agency equivalent and afford it the following options:

(A) Ask the SBA Central Office to place the case in suspense to afford it the opportunity to review all documentation contained in the case file which has been forwarded to the Central Office or;

(B) Submit new information for the SBA Central Office's consideration.

(ii) In either §§ 125.5(b)(13)(i)(A) or (ii)(B) above, the SBA Central Office will establish a new suspense date mutually agreeable to both agencies.

(iii) After reviewing all available information, the AA/PA will either issue or deny the COC. If the AA/PA's decision is to deny the COC, the applicant and contracting agency will be so informed in writing by the Regional Office. If the decision is to issue the COC, a letter certifying the responsibility of the firm (the COC) is sent to the contracting agency by the Central Office and the applicant is informed of such issuance by the Regional Office. Except as set forth in § 125.5(b)(15) below, there shall be no agency appeal from or reconsideration of the decision of the Associate Administrator for Procurement Assistance.

(14) The notification to an unsuccessful applicant following either a Regional Office or a Central Office denial will briefly state the reason(s) for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for the denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. The meeting does not constitute an opportunity to rebut the merits of the Agency's decision to deny the COC. Such meeting will be for the sole purpose of giving the applicant the opportunity to correct deficiencies so as to improve its ability to obtain future COC's.

(15) The decision to issue a COC may be reconsidered, at the discretion of SBA, in the following circumstances:



(i) SBA discovers after issuance of a COC, but before award of any contract in reliance upon such COC, that the COC applicant submitted materially false information, or omitted materially adverse information, or new materially adverse information is discovered relating to the current responsibility of the applicant concern. SBA may request that the contracting agency return the matter for reevaluation of the original decision for purposes of affirming or rescinding the COC. The procedures under § 125.5(b)(9) and (b)(12) do not apply.

(ii) Where the contract for which a COC has been issued has not been awarded within 60 days, SBA may request that the contracting agency provide the reason for the delay. SBA shall determine from the contracting officer when the contract will be awarded. Once the contracting officer advises that an award is intended to be made, SBA may request that it be allowed to reevaluate its earlier decision in light of the firm's current circumstances. SBA may investigate the firm's current circumstances as it deems appropriate. It may affirm or rescind the existing COC. The procedures under §§ 125.5 (b)(9) and (b)(12) above do not apply. This provision shall not be used by the contracting officer to delay or withhold contract award and is for the purpose of allowing SBA the opportunity of reaffirming or rescinding its COC based upon circumstances then existing.

(c) *Prime contractor performance requirements.* (1) In the case of a small business set-aside, as defined in FAR 19.502-2(a), a small business concern may not be issued a COC or awarded a contract for a Government procurement (under this subpart), unless the concern agrees that:

(i) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(ii) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(iii) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(iv) In the case of a contract for construction by special trade contractors, as defined in 13 CFR 121.601, the concern will perform at least 25 percent of the cost of the contract

with its own employees (not including the costs of materials).

(2) The Prime Contractor Performance Requirements shall be considered an element of responsibility and not a component of size eligibility.

(3) The base contract period (excluding any options) will be used to determine compliance with the Prime Contractor Performance Requirements.

(4) *Definitions.* The following definitions apply to this section:

(i) *Cost of the contract.* The cost of the contract is all allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(ii) *Cost of contract performance incurred for personnel.* The cost of contract performance incurred for personnel includes direct labor costs and any overhead which has only direct labor as its base, plus the concern's General and Administration rate multiplied by the labor cost.

(iii) *Cost of manufacturing.* Cost of manufacturing means those costs incurred by the firm in the production of the end item being acquired under the subject solicitation. These are costs associated with the manufacturing process including the direct costs of fabrication, assembly or other production activities, and allocable and allowable indirect costs (e.g., inspection, testing and project management). Costs of materials, as well as the profit or fee from the contract, are excluded from the cost of manufacturing.

(iv) *Cost of materials.* The cost of materials includes the cost of purchasing, handling, and associated shipping cost for the purchased items which include raw materials, "off the shelf" parts, supplies, components and subassemblies, and similar proportionately high-cost common supply items requiring additional manufacturing or incorporation to become end items. Materials may also include special tooling or special testing equipment and, in the case of construction, construction equipment purchased for, and required to perform on the contract.

(v) *Personnel* has the same meaning as the term "employees" in § 121.404 of this title.

(vi) *Subcontracting.* Subcontracting, as used in this subparagraph, means that portion of the contract performed by a firm, other than the concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available as "off the shelf", and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the

government as a portion of the solicitation. Raw castings, forgings and moldings will be considered as materials. Where the prime contractor has been directed by the Government to utilize a specific source(s) for parts, supplies, components or subassemblies, the costs associated with those purchases will be considered as the cost of materials.

(5) *Time of compliance.* For COC purposes, time of compliance with this performance of work requirement, shall occur at the time the offeror submits its application to SBA for COC consideration.

(6) *Procedure.* The procedures of paragraph 125.5(b) apply where the contracting officer determines non-compliance with the Prime Contractor Performance Requirements applicable to a small business set-aside and refers the matter to SBA for a COC determination.

(d) *Walsh-Healey referrals.* A contracting officer, after conducting a review and documenting that a small business concern is not eligible for award due 41 U.S.C 35(a) (the Walsh-Healey Public Contracts Act), must notify SBA of such determination.

(1) SBA shall either certify that the concern is eligible under the Walsh-Healey Act for the specific contract, or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition. If, however, a small business concern has been denied award of a proposed contract by SBA for issues relating to responsibility, the issue of ineligibility under Walsh-Healey becomes moot and the case will not be processed further.

(2) The contracting officer must comply with 41 CFR 201.101(b)(4), in making a determination of ineligibility before referring the matter to SBA.

(3) In the event of either a third party protest or a protest received after contract award, but before final completion of the contract, the contracting officer shall follow the procedures in 41 CFR 201.201(b)(5) or section 50-201.101(b)(7), as appropriate, in making a Walsh-Healey Act determination.

(4) *Procedure.* With the exception for ineligibility cited in § 125.5(d)(1) above, the procedures of § 125.5 (a) and (b) apply where a small business concern is determined to be in non-compliance with the provisions of the Walsh-Healey Act.

(e) *Effect of COC certification.* By the terms of the Small Business Act, as amended, 15 U.S.C. 631, *et seq.*, the COC is conclusive as to responsibility. Where SBA issues a COC on behalf of a small business with respect to a particular



contract, contracting officers are directed to award the contract without requiring the firm to meet any other requirement with respect to responsibility and or eligibility.

(f) *Non-certification.* Denial of a COC by SBA does not preclude a contracting officer from awarding a contract to the referred firm.

Dated: July 6, 1992.

Patricia Saiki,  
Administrator.

[FR Doc. 92-19781 Filed 8-20-92; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 92-ASW-03]

#### Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta S.p.A. Model A109A and A109All Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes the superseding of an existing airworthiness directive (AD), applicable to Agusta Model A109A and A109All helicopters, that currently imposes a calendar life limit of 10 years and 6 months on the main rotor retention strap assemblies (strap assemblies). This action would require reducing the AD calendar life to 8 years. This proposal is prompted by additional service experience and analyses, that shows the life limit needs to be reduced from 10 years and 6 months as required by the current AD to 8 years to prevent failure. The actions specified by the proposed AD are intended to prevent failure of the straps and loss of control of the helicopter.

**DATES:** Comments must be received by October 5, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-03, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Agusta Aviation Corporation, NE. Service Center, Norcom and Red Lion Roads, Philadelphia, Pennsylvania 19154. This information may be

examined by the FAA, Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

#### FOR FURTHER INFORMATION CONTACT:

Mike Mathias, Aerospace Engineer, Regulations Group, ASW-111, FAA Rotorcraft Directorate, Aircraft Certification Service, 4400 Blue Mound Road, Fort Worth, Texas 76193-0111, telephone number (817) 624-5123, fax number (817) 740-3376.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-03." The postcard will be date stamped and returned to the commenter.

#### Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-03, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

**Discussion:** On July 10, 1987, the FAA issued AD 87-15-10, Amendment 39-5681, (52 FR 27787, July 1987) to require replacement of the strap assemblies at either a calendar life of 10 years and 6 months or 5,000 hours' time in service, whichever comes first. That action was prompted by data that showed the

straps deteriorated with calendar time as well as time in service. That condition, if not corrected, could result in loss of the strap assembly and subsequent loss of the helicopter.

Since the issuance of that AD, based on additional service experience and analyses, the manufacturer has reduced the calendar life of the retention straps in the maintenance manual from 10 years and 6 months to 8 years. The FAA agrees that the 8 year calendar life contained in the maintenance manual is required. Therefore, the previous AD is being superseded and a new AD issued to provide the required replacement times and to prevent confusion about the mandatory retirement life of the straps assemblies that could lead to failure by owners and operators to replace the strap assembly at the appropriate time interval, and that could result in failure of the strap assemblies and loss of control of the helicopter.

Since this condition described is likely to exist on other rotorcraft of this same type design, the proposed AD would supersede AD 87-15-10, Amendment 39-5681 (52 FR 27787, July 24, 1987), and require an 8 year calendar life instead of 10 years and 6 months on the strap assemblies.

The FAA estimates that approximately 46 Agusta Model A109A and A109All helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter per year to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would cost approximately \$1,931 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$98,946 for the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the



criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the Caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-5681, (52 FR 27787, July 24, 1987), and by adding a new airworthiness directive (AD), to read as follows:

#### Costruzioni Aeronautiche Giovanni Agusta S.p.A.

Docket No. 92-ASW-03. Supersedes AD 87-15-10, Amendment 39-5681, Docket No. 87-ASW-28.

**Applicability:** Model A109A and A109AH helicopters, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent possible failure of the main rotor retention strap assemblies (strap assemblies), accomplish the following:

(a) Replace the strap assemblies, part numbers (P/N) 2601521 and 109-0101-95-1, -3, and -105, with airworthy parts in accordance with the following schedule:

(1) For strap assemblies which have more than 7½ calendar years' time in service on the effective date of this AD, replace the strap assemblies within the next 6 months' calendar time from the effective date of this AD or before accumulating 5,000 hours' time in service on the strap assembly, whichever occurs first.

(2) For strap assemblies that have less than 7½ calendar years' time in service on the effective date of this AD, replace the strap assemblies before accumulating 8 calendar years' time in service since installation or before accumulating 5,000 hours' time in service on the strap assembly, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager,

Rotorcraft Standards Staff, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76193-0110, or by the Manager, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Rotorcraft Standards Staff or the Manager, Brussels Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the rotorcraft to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 16, 1992.

**Henry A. Armstrong,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92-19996 Filed 8-20-92; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 92-NM-114-AD]

#### Airworthiness Directives; General Dynamics Convair Model 240, 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified for Turbo-propeller Power

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Convair Model 240, 340, 440, and C-131 (military) series airplanes. This proposal would require the implementation of a corrosion prevention and control program, either by the accomplishment of specific inspection procedures or by a change to the approved maintenance inspection program. This proposal is prompted by an in-depth review that revealed the need for additional inspections of corrosion-prone areas and components. The actions specified by the proposed AD are intended to prevent the degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

**DATES:** Comments must be received by October 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Dynamics/Convair Division, Lindbergh Field Plant, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brent Bandle, Aerospace Engineer, Airframe Branch, ANM-123L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5237; fax (310) 988-5120.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-114-AD." The postcard will be date stamped and returned to the commenter.



**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion:** Service experience in the transport category airplane fleet has revealed that an aging airplane needs more care and special attention during maintenance processes and, at times, requires more frequent inspection of structural components for damage due to environmental deterioration, accidental damage, and fatigue. Airplane structural materials have finite lives, and the extent of these is affected by age, operational environment, and operational experience that the material endures in day-to-day usage of the airplane. FAA Advisory Circular (AC) 91-60, "The Continued Airworthiness of Older Airplanes," contains guidelines for developing, implementing, and updating thorough maintenance procedures to ensure increasing vigilance as an airplane ages.

In accordance with the guidelines provided by AC 91-60, General Dynamics, Convair Division, conducted an in-depth review of Model 240, 340, 440, and C-131 (military) series airplanes, including those modified for turbo-propeller power (commonly known as Model 580, 600, and 640 airplanes). As a result of this review, General Dynamics has developed an inspection program, the intent of which is to control corrosion problems that may jeopardize the continued airworthiness of the Convair fleet. This inspection program is described in General Dynamics, Convair Division, Document Number ZS-340-2000, "Supplemental Corrosion Inspection Document," dated February 1992, which the FAA has reviewed and approved.

This Document defines corrosion-susceptible areas and items peculiar to Convair aircraft that, if corroded, would adversely affect the integrity of the airframe. The areas/components addressed in the Document include:

- a. Galley and lavatory areas;
- b. Landing gear assemblies;
- c. Doors and their latching assemblies;
- d. Fuselage exterior and interior;
- e. Nacelles and engine mount fittings and struts;
- f. Empennage items, including elevators, tabs, the horizontal and vertical stabilizers, and rudders;
- g. Windows; and
- h. Wing skin, trailing/leading edges, splice plates, attach fittings, ailerons, and flaps.

The Document recommends various inspections of these corrosion-prone components and surfaces that will ensure the detection of corrosion in a timely manner. A schedule for initial and repetitive inspections is included in the Document: The recommended intervals for initial inspections range from 3 months to 48 months, depending upon the area and type of inspection; the recommended intervals for repetitive inspections range from 12 months to 60 months. Although the Document does not provide detailed procedures for inspection, cleaning, or repair of each area, it contains illustrations of the inspection areas, descriptions of the typical types of corrosion found in the area, and a recommendation of the general type of inspection necessary.

Corrosion, if not detected and corrected in a timely manner, can degrade the structural capabilities of the airplane.

Since corrosion is likely to exist or develop on airplanes of this type design, and AD is proposed which would require that operators either (1) accomplish a schedule of specific inspections for corrosion as outlined in the General Dynamics Document described previously; or (2) revise their FAA-approved maintenance inspection program to include a corrosion inspection program as described in the General Dynamics Document. Any corrosion detected would have to be repaired in accordance with the applicable Structural Repair Manual (SRM) or in accordance with a method approved by the FAA.

There are approximately 320 Model 240, 340, 440, and C-131 (military) series airplanes (including those modified for turbo-propeller power) of the affected design in the worldwide fleet. The FAA estimates that 25 U.S. operators and 240 airplanes of U.S. registry would be affected by this proposed AD.

For operators who elect to accomplish the schedule of inspections (the "task-by-task" method), the proposed inspections would require a total of approximately 240 work hours per airplane to accomplish, at an average labor rate of \$55 per work hour. Based on these figures, the total cost impact of the proposed inspection requirements on U.S. operators who elect this procedure is estimated to be \$3,188,000, or \$13,200 per airplane, for one inspection cycle.

For operators who elect to revise the FAA-approved maintenance inspection program, the FAA estimates that it would require approximately 100 work hours per operator to accomplish the revision. At an average labor rate of \$55 per work hour, the total cost impact of this proposed requirement on U.S.

operators who elect this procedure would be \$137,500, or \$5,500 per operator.

The total cost figures discussed above assume that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**General Dynamics, Convair Division**

Docket 92-NM-114-AD.

**Applicability:** Model 240, 340, 440, and C-131 (military) airplanes, all serial numbers, including those modified for turbo-propeller power (commonly referred to as Model 580, 600, and 640 series airplanes); certificated in any category.



**Compliance:** Required as indicated, unless accomplished previously.

To prevent degradation of the structural capabilities of the airplane due to problems associated with corrosion, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, conduct the initial inspection for each area/component within a period of time, measured from a date one year after the effective date of this AD, not to exceed the applicable interval specified in the "Initial" column of the schedule on pages 5-10-1 through 5-10-6 of Chapter 5 of General Dynamics, Convair Division, Document Number ZS-340-2000, "Supplemental Corrosion Inspection Document," dated February 1992 (hereafter referred to as "the Document"). Thereafter, repeat the inspections at intervals not to exceed the applicable interval specified in the "Follow-on" column of the schedule on pages 5-10-1 through 5-10-6 of the Document.

(b) As an alternative to the requirements of paragraph (a) of this AD:

(1) Within one year after the effective date of this AD, revise the FAA-approved maintenance inspection program to include the inspections of the areas and components defined in the Document; or incorporate an equivalent program that is approved by the FAA.

(2) After accomplishing the requirements of paragraph (b)(1) of this AD, conduct the initial inspection for each area/component at an interval not to exceed the applicable interval specified in the "Initial" column of the schedule on pages 5-10-1 through 5-10-6 of Chapter 5 of the Document. Thereafter, repeat the inspections at intervals not to exceed the applicable interval specified in the "Follow-on" column of the schedule on pages 5-10-1 through 5-10-6 of Chapter 5 of the Document.

(c) If corrosion is detected as a result of any inspection required by this AD, prior to further flight, repair in accordance with the General Dynamics/Convair Structural Repair Manual (SRM) for the pertinent airplane model; or, if an applicable repair method is not contained in the SRM, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 6, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-19995 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 151

#### Examination of Wool and Hair

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations to remove references to estimation of clean yield of wool or hair by non-laboratory method and to eliminate Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair. The proposed amendments are intended to conform the regulations to current Customs procedures which no longer include informally estimating the clean yield of wool or hair and notifying the importer of that estimate. Determination of the clean yield of wool or hair would thus be made on a case-by-case basis only through analysis performed in a Customs or commercial laboratory.

**DATES:** Comments must be received on or before October 20, 1992.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Ira Reese, Office of Laboratories and Scientific Services (202-927-1060).

#### SUPPLEMENTARY INFORMATION:

##### Background

Subpart E within part 151, Customs Regulations (19 CFR part 151), covers examination and testing procedures applicable to imported wool and hair for tariff purposes. Sections 151.61 through 151.75 have reference to wool and hair subject to duty at a rate per clean kilogram under the Harmonized Tariff Schedule of the United States (HTSUS), and §151.76 covers wool for which classification under the HTSUS is also controlled by the grade of the wool.

As regards the determination of clean yield, §§ 151.61 through 151.75 refer to two procedures performed by Customs: (1) Estimation of clean yield content by a non-laboratory method involving an examination by the appropriate

Customs officer and with notice of the results of the examination provided to the importer on Customs Form 6451. Notice of Percentage Clean Yield and Grade of Wool or Hair, and (2) testing for clean yield content in a Customs laboratory with the results provided to the importer on Customs Form 6415, Laboratory Report. With regard to determination of the grade of wool, § 151.76 simply refers to an examination for grade and provides for notification to the importer by mail if the determination of grade through that examination will result in the assessment of duty at a higher rate than that claimed by the importer; although the regulation does not specify the form to be used for such notice to the importer, Customs has traditionally used either Customs Form 6451 or Customs Form 29, Notice of Action, for this purpose.

When the regulatory provisions relating to estimation of clean yield content were adopted, they reflected a then-current administrative procedure whereby specially trained Customs inspectors (referred to in some ports as "Wool Administrators") informally examined crude wool shipments and provided an estimate of the clean yield content of the wool to both the importer of record and the Customs inspector (appraiser) on Customs Form 6451. However, the position of "Wool Administrator" was eliminated a number of years ago, Customs no longer estimates the clean yield of wool or hair, and, consequently, Customs Form 6451 is no longer used by Customs to provide notice of clean yield to the importer. Under current procedures, if a clean yield content report is needed for Customs purposes, Customs will sample and analyze the crude wool for clean yield content in a Customs laboratory specializing in wool analysis, and when a Laboratory Report is issued on Customs Form 6415, a copy thereof is sent by Customs to the importer of record. (The only circumstances in which an estimate of clean yield might still be used is when the importer independently chooses to include in the entry documentation an estimate obtained from a public estimator; however, an estimate by such a private sector party is not provided for in the regulations and Customs is not required to accept the estimate for entry purposes.)

In order to ensure that the regulations reflect current requirements and procedures regarding the determination of clean yield, Customs is proposing in this document (1) to remove § 151.72 which provides for estimation of clean yield by non-laboratory method and



specifies use of Customs Form 6451 as the means of notification to the importer, and (2) to make conforming changes to other sections of the regulations involving removal of all references: To Customs Form 6451; section 151.72; an examination or estimation procedure (which in the regulatory texts has reference only to a non-examination procedure); and importer notification of the results of an examination or estimation procedure. The present regulatory provisions regarding laboratory sampling and analysis (which also provide for analysis by a commercial laboratory under certain circumstances) would thus constitute the sole means under the regulations for determination of clean yield content and would remain unchanged. Finally, no changes to § 151.76 are proposed in this document because the references therein to examination and notification regarding the grade of wool are sufficiently general as to cover current procedures.

#### Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely conform the regulations to present administrative practice and thus would not result in any increased economic impact. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

#### Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 151

Customs duties and inspection, Imports, Examination, sampling and testing, Wool.

#### Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 151, Customs Regulations (19 CFR part 151), as set forth below:

#### PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. \* \* \* Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. \* \* \*

2. Section 151.64 is revised to read as follows:

#### § 151.64 Extra copy of entry summary.

One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean kilogram shall be filed in addition to the copies otherwise required.

#### § 151.70 [Amended]

3. Section 151.70, first sentence, is amended by removing at the end the words ", in which case the clean yield of the wool or hair in such sampling unit shall be estimated as provided for in § 151.72".

4. Section 151.71 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory.* The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of each general sample as established by the test, or a statement of the reason for not testing a general sample, shall be forwarded to the district director.

(b) *Notification to importer.* Where samples of wool or hair have been tested in a Customs laboratory and the

district director has received a copy of the Laboratory Report, Customs Form 6415, the district director shall promptly provide notice of the test results by mailing a copy of that report to the importer.

#### § 151.72 [Removed]

5. Section 151.72 is removed.

#### § 151.73 [Amended]

6. Section 151.73 is amended by removing from paragraph (a) the words "or a reestimation of clean yield made in accordance with § 151.72(c)".

7. Section 151.73 is further amended by removing from paragraph (b) the words "or reexamination".

#### § 151.75 [Amended]

8. Section 151.75 is amended by removing the words "and examinations".

Approved: August 10, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 92-19962 Filed 8-20-92; 8:45 am]

BILLING CODE 4820-02-M

#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 117

[CGD7-92-82]

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Little River to Savannah River, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** At the request of the State of South Carolina, the Coast Guard proposes to change the regulations governing the operation of the Wappoo Creek Drawbridge, mile 470, at Charleston, South Carolina, by permitting the draw to be closed an additional one-half hour at the beginning of the morning regulated period. This change is being made as a result of complaints about early morning highway traffic congestion caused by bridge openings during the semiannual (seasonal) migration of recreational vessels on the Atlantic Intracoastal Waterway. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.



**DATES:** Comments must be received on or before October 5, 1992.

**ADDRESSES:** Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. For information concerning comments the telephone number is (305) 536-4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary D. Pruitt, Project Manager, Bridge Section, (305) 536-4103.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD7-92-82) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Gary Pruitt at the address under "ADDRESSES". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

##### **Drafting Information**

The principal persons involved in drafting this document are Mr. Gary D. Pruitt, Project Manager, and LT. J.M. Losego, Project Counsel.

##### **Background and Purpose**

The purpose of this change is help avoid highway traffic delays caused by early morning bridge openings during the seasonal migration of recreational vessels on the Atlantic Intracoastal Waterway. The draw presently opens on signal except that the draw need not open from 6:30 a.m. to 9 a.m., Monday through Friday except federal holidays. From April 1 to November 30 from 9 a.m.

to 4 p.m., Monday through Friday, except federal holidays, the draw need not open except on the hour and the half-hour. From April 1 to November 30, from 9 a.m. to 7 p.m., Saturday, Sundays and federal holidays, the draw need not open except on the hour and the half-hour.

The early morning vehicular commuter traffic originating on James Island and Johns Island is often delayed by bridge openings caused by the seasonal migration of vessel traffic on the Atlantic Intracoastal Waterway. Based upon a Coast Guard review of the waterway traffic requiring openings, a determination was made that draw openings for seasonal pleasure craft between the hours of 6 a.m. and 6:30 a.m., just prior to the existing rush hour closures, adversely impact movement of land transportation. During the last two years the Coast Guard has issued temporary regulations that extended the existing morning closed periods by one-half hour during the months of April, May, October and November. These temporary regulations would become permanent during the seasonal migration periods under this proposed change.

##### **Discussion of Proposed Amendments**

The Coast Guard's analysis determined that the elimination of the bridge openings during the months of April, May, October and November from 6 a.m. to 6:30 a.m. on weekdays would improve the morning traffic flow with minimum impact on navigation. This rule changes only the morning regulated period on weekdays and only applies to non-exempt vessels. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall be passed through the draw at any time.

##### **Regulatory Evaluation**

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and

that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be minimal on all entities. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

##### **Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

##### **Federalism**

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### **Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

##### **List of Subjects in 33 CFR Part 117**

###### **Bridges.**

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### **PART 117 DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.911, paragraph (d) is revised to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(d) SR 171/700 bridge across Wappoo Creek Mile 470.8 at Charleston. The draw shall open on signal, except that from April 1 to November 30 from 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, and from 9 a.m. to 7 p.m., on Saturdays, Sundays and federal holidays, the bridge need not open.



except on the hour and half-hour. From June 1 to September 30 and from December 1 to March 30 the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m. Monday through Friday, except federal holidays, and from April 1 to May 31 and from 1 October to November 30 Monday through Friday, except federal holidays, the draw need not open from 6 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m.

Dated: August 7, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 92-20003 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 117

[CGD2-91-05]

#### Drawbridge Operation Regulations; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

**SUMMARY:** The Coast Guard is withdrawing a proposed rule to change the regulations governing the requirements for opening the Red River drawbridges at Mile 275.9 and Mile 277.1 at Shreveport, Louisiana. The Coast Guard was considering a change that would have allowed the drawspans not to open for the passage of vessels, provided the drawspans were returned to operable condition within six months after notification by the District Commander to do so. The proposal was made because no requests for opening the draws had been made in the past 20 years. The proposed change is being withdrawn because public comments indicated that the change would not serve the needs of existing and prospective navigation.

**DATES:** This rule is withdrawn on August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314-539-3724.

**SUPPLEMENTARY INFORMATION:** On April 16, 1991, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register at 56 FR 15313. The Commander, Second Coast Guard District also published the proposal in a Public Notice dated April 23, 1991. In each notice, interested parties were invited to participate in the rulemaking by submitting written views, comments, data, or arguments no later than May 31, 1991. A number of comments were received.

#### Drafting Information

The drafters of this notice are Wanda G. Renshaw, Project Officer, and Lieutenant Michael A. Suire, Project Attorney.

#### Discussion of Comments

A member of the U.S. House of Representatives, two waterway associations, a local business firm and three waterway users objected to the proposal. They all recommended that any revision to the regulation exempting these bridges from opening be delayed until after Red River Navigation Lock 5, Mile 250.0, had been constructed. The comments further discussed the possibility of additional navigational development and related construction above Shreveport, Mile 275.0, which would require the passage of materials and equipment past the bridges. The Corps of Engineers confirmed that completion of the Red River Navigation project may result in alteration or relocation of these bridges to ensure the draws adequately span the navigation channel. The sum of the comments indicates that there appears to be a genuine continuing need for the bridges to remain capable of opening upon reasonable notice. Accordingly, the Coast Guard has decided not to pursue its proposal to revise the operation regulation for the Red River bridges at Mile 275.9 and Mile 277.1.

#### List of Subjects in 33 CFR Part 117

##### Bridges.

In consideration of the foregoing and under the authority of 33 U.S.C. 449, the Notice of Proposed Rulemaking published on April 16, 1991 at 56 FR 15313 [Docket No. CGD2-91-05] is withdrawn.

Dated: July 30, 1992.

J.J. Lantry,

Captain, U.S. Coast Guard, Acting  
Commander, Second Coast Guard District.

[FR Doc. 92-19934 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

#### Office of the Secretary

##### 33 CFR Part 154

#### Status of Development of Response Plans Under the Oil Pollution Act of 1990 (OPA 90)

AGENCY: Office of the Secretary, DOT.

ACTION: Status of development of  
response plans.

**SUMMARY:** The Secretary of the Department of Transportation is reporting on the status of response plans required by section 311(j)(5) of the

Federal Water Pollution Control Act, as amended by section 4202 of the Oil Pollution Control Act, as amended by section 4202 of the Oil Pollution Act of 1990 for transportation-related facilities. This includes the status of several rulemaking efforts within the Department and necessary regulatory information or guidance to assist the regulated community in meeting statutory dates in OPA 90 for preparation and submission of response plans.

#### FOR FURTHER INFORMATION CONTACT:

Steve Farbman of Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement, Office of the Secretary (C-50), (202) 366-4723, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:** In recent years several catastrophic oil spills have threatened the marine environment of the United States. Among these were the EXXON VALDEZ in Prince William Sound, Alaska, the AMERICAN TRADER in California's coastal waters, the MEGA BORG in the Gulf of Mexico, the Ozark pipeline spill in Missouri, which entered into the Missouri and Mississippi Rivers, and the major discharge from the Ashland Oil Terminal into the Monongahela River at Floreffe, Pennsylvania. These spills had extensive impact on the marine environment, including the loss of fish and wildlife.

In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). Section 4202(a) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)). It set out the requirements for tank vessel and facility response plans and periodic inspections of discharge-removal equipment in sections 311(j)(5) and (j)(6), respectively. Section 4202(b)(4) of OPA 90 established an implementation schedule for these provisions.

Section 311(j) of the FWPCA requires by a specified date the preparation and submission of response plans by all tank vessels as defined in 46 U.S.C. 2101, offshore facilities, and onshore facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. This includes the substantial threat of such a discharge. Response plans must be submitted to the appropriate agency by February 18, 1993. Tank vessels,



offshore facilities, and affected onshore facilities must be operating in compliance with their plans by August 18, 1993. Tank vessels, offshore facilities, and affected onshore facilities not complying with these dates are prohibited from handling, storing, or transporting oil after the applicable dates.

OPA 90 provided that the regulations to implement response plan requirements were to be published by August 18, 1992. Because of the statutory deadline for submission of response plans and the uncertainty over the publication date of final rules for these regulatory projects, the Department of Transportation expects to provide either interim final rules or guidance to assist the regulated community in preparing response plans in the very near future.

## Background

### *Vessel Response Plans*

On August 30, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) on this project in the *Federal Register* (56 FR 43534). The ANPRM discussed the background, statutory requirements of section 311(j)(5) of the FWPCA, and the general regulatory approach. The ANPRM posed 59 questions for public comment. The Coast Guard received 172 comments. In addition, the Coast Guard held a public workshop on vessel response plans on November 14, 1991, in Washington, DC. Nearly 200 persons participated in this workshop. Because of the contentious nature of the issues and a wide variation in the public comments to the ANPRM, the Coast Guard proceeded with a negotiated rulemaking process. The Oil Spill Response Plan Negotiated Rulemaking (Reg-Neg) Committee was chartered in December 1991 and began meeting on January 8, 1992. The Committee was composed of representatives of twenty-six organizations representing Federal and state governments, environmental and citizens groups, oil handling facilities, vessel owners and operators, spill cleanup contractors, and labor unions.

The Coast Guard published a notice of proposed rulemaking (NPRM) in the June 19, 1992, *Federal Register* (57 FR 27514). The NPRM was drafted using the comments received on the ANPRM and from the Reg-Neg Committee recommendations. This NPRM detailed proposed requirements for vessel response plan format, training, drills, submission and revision procedures, methods for determining the resources required for response to a vessel's worst

case discharge to the maximum extent practicable, and guidelines for evaluating and rating response equipment performance. The comment period closed on the NPRM on August 3, 1992.

The Reg-Neg Committee will reconvene on August 18, 1992 to discuss comments received that relate to the recommendations of the Committee. Any additional recommendations from the Committee will be considered along with the public comments received in drafting the final rule.

## Marine Transportation-Related (MTR) Facilities

On March 11, 1992 the Coast Guard published an advance notice of proposed rulemaking on response plans for MTR facilities in the *Federal Register* (57 FR 8708). The ANPRM discussed the background, statutory requirements of section 311(j)(5) of the FWPCA, and general regulatory approach. The ANPRM also posed 50 questions. The responses to those questions were used in drafting the proposed rule. The Coast Guard intends to adopt appropriate planning concepts from the vessel response plan regulations and to apply them to the marine facility response plan regulation. The Coast Guard continues to refine the notice of proposed rulemaking (NPRM) on MTR facilities and is preparing its for final clearance and publication in the *Federal Register*.

### *Non-Marine Transportation-Related Facilities Including Pipelines, Railroad, and Motor Carriers*

The Department of Transportation is currently drafting proposed regulations for pipelines, railroads, and motor carriers. These regulations will use relevant concepts developed in the vessel and marine facility response plan regulations.

## Status of Regulatory Projects

For vessel response plans, the Coast Guard intends to publish a final rule in the *Federal Register* as soon after the conclusion of the Reg-Neg Committee meeting as possible. The Coast Guard is also preparing a notice of proposed rulemaking (NPRM) for response plans for marine-related facilities and is considering making that NPRM an interim final rule with request for comments so as to be able to provide definitive guidance to the industry in a timely manner. The Coast Guard anticipates that the final rule and any interim final rule for vessels and marine facilities will be published in the *Federal Register* not later than mid-September 1992. However, should unforeseen

delays occur, the Coast Guard is preparing guidance documents to be supplied to the regulated community by mid-September 1992 to assist in the preparation of response plans.

The Department also is preparing an NPRM and considering an interim rule for response plans for pipelines, railroads, and motor carriers. The Department intends to provide a guidance document to the regulated community should any interim final rule not be published by mid-September 1992.

Dated: August 17, 1992.

Walter B. McCormick, Jr.,

General Counsel.

[FR Doc. 92-19987 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-62-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-4197-6]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by POP Fasteners (POP), a division of Black and Decker Corporation, of Shelton, Connecticut, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in EPA regulations. This action responds to a delisting petition submitted under those regulations which allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the



concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until October 5, 1992. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by September 8, 1992. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-92-PFEP-FFFFF"

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS-330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The public may copy material from any regulatory docket at a cost of \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:**

For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-1436.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Authority**

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA,

EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

**B. Approach Used to Evaluate This Petition**

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based

on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for POP's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of POP's petitioned waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of



RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because POP sends the petitioned waste to an off-site commercial disposal facility (Stablex, Canada) that receives wastes from numerous other generators, the ground-water monitoring data collected at the commercial facility would not be meaningful for an evaluation of this specific effect of the petitioned waste on the aquifer underlying the disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

## II. Disposition of Delisting Petition

POP Fasteners, Shelton, Connecticut

### A. Petition for Exclusion

POP Fasteners' facility, located in Shelton, Connecticut, is involved in the manufacture of hand and pneumatic riveting tools as well as assorted rivets. POP petitioned the Agency to exclude its wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents of concern for EPA Hazardous Waste No. F006 waste are: cadmium, hexavalent chromium, nickel and cyanide (complexed) (see 40 CFR part 261, Appendix VII).

POP petitioned the Agency to exclude its waste filter cake because it does not believe that the waste meets the criteria of the listing. POP claims that its treatment process generates a non-hazardous waste because the constituents of concern in the waste are in an essentially immobile form. POP also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional (HWSA) of 1984. See Section 222 of HSWA, 42 USC § 6921(f), and § 280.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of POP's petition.

### B. Background

On March 5, 1990, POP petitioned the Agency to exclude its metal hydroxide filter cake from the lists of hazardous wastes contained in §§ 261.31 and 261.32, and subsequently provided additional information to complete its petition. In support of its petition, POP submitted: (1) Detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; (2) a list of all raw materials

<sup>1</sup> POP has claimed portions of their manufacturing and treatment process descriptions as confidential business information (CBI). This information, therefore is not available in the RCRA public docket for today's notice.

and Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24 and nickel; (4) results from the Toxicity Characteristics Leaching Procedure (TCLP; as described in 40 CFR part 261, appendix II) analyses for the eight TC metals and nickel; (5) results from total constituent analyses for total and reactive sulfide and cyanide for representative samples of the petitioned waste; (6) results from total oil and grease analyses on representative samples of the petitioned waste; and (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

POP manufactures hand and pneumatic hydraulic riveting tools as well as assorted rivets at this facility. The rivets are used in the automotive, commercial, industrial and consumer industries. Rivets manufactured at this facility are made out of carbon steel, stainless steel and aluminum. The manufacturing processes which contribute to the petitioned waste include chromate conversion coatings, black oxide coatings, and tumbling for general cleaning of aluminum, steel and stainless steel parts.

Zinc chloride acid plating rinses; tumbling wastes from tumbling barrels, parts cleaning, washers, and general tumbling; acid/alkaline rinses from the rivet cleaning in tumbling barrels; and filtrate from the plate-and-frame filter press are sent to an equalization tank. In addition, yellow and clear chrome rinses from both automatic and manual lines are segregated, treated with scrap iron and sulfuric acid to reduce hexavalent chromium at a low pH, and sent to the equalization tank. Oil and grease from the tumbling barrel operations are skimmed off the top of the equalization tank and pumped into drums that are periodically sent for oil reclamation. Aluminum sulfate and calcium chloride are added as preflocculants to break down emulsified oils, complex cleaners, and chelates in the resulting waste stream.

The waste stream is then neutralized with sodium hydroxide and routed to a tank where an anionic polyelectrolyte is added to promote flocculation. The resultant mixture is directed to two clarifier-settlers operating in parallel where a silicon-based defoamer is added to minimize foaming before the effluent is discharged to the Housatonic River. The underflow sludge, collected in a sludge containment tank separating



the two clarifiers, is pumped into a sludge conditioning tank where it is mixed and homogenized and ultimately pumped into a plate-and-frame filter press. The dewatered sludge is discharged to a 1.5 cubic yard hopper, which is emptied twice a day into a 30 cubic yard roll-off container. The dewatered sludge is currently sent to a permitted hazardous waste treatment facility.

To collect representative samples from filter presses like POP's petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over a period of time (e.g., grab samples collected every hour and composited by shift) or a greater number of samples sufficient to represent the variability or uniformity of the waste. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985.

Originally, POP submitted analytical results of four grab samples and four composite samples collected from the self-dumping hopper during a five-month period from November 1988 to April 1989. Based on a review of the sampling and analysis information provided in the petition, the Agency requested that POP resample the waste because no laboratory quality assurance and quality control information were provided with the sample results.

Subsequently, POP collected eight additional composite samples of the filter cake during a one-month period between November 19, 1990 and December 15, 1990. Grab samples were collected 2 or 3 times daily during each drop of the filter press into the mobile hopper. Two composite samples were formed from two sets of grab samples collected over each 4 to 8-day period to give a total of eight composite samples.

Seven composite samples were analyzed for total constituent concentrations (i.e., mass of a particular constituent per mass of waste) of the TC metals, nickel, cyanide, and sulfide and TCLP concentrations (i.e., mass of a particular constituent per unit volume of extract) of the TC metals and nickel. One composite sample was saved, as planned, for confirmatory analysis only. The seven composite samples were also analyzed for total oil and grease content, ignitability, reactivity, and corrosivity.

### C. Agency Analysis

POP used SW-846 Methods 7061 through 7760 to quantify the total constituent concentrations of the TC metals and nickel in the petitioned waste. POP used SW-846 Methods 9010 and 9030 to quantify the total constituent concentrations of cyanide and sulfide, respectively, in the petitioned waste.

Using SW-846 Method 9071, POP determined that its filter cake had a maximum oil and grease content of 0.97 percent on a wet basis. On a dry basis, the filter cake would have a maximum oil and grease content exceeding one percent; therefore, POP chose to follow more stringent extraction procedures and modify the TC procedure in accordance with the Oily Waste EP (OWEP) methodology. Wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard TCLP procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. Specifically, POP modified the OWEP (SW-846 Method 1330) by substituting the TCLP for the extraction procedure in Step 7.10 of the OWEP. POP used this modified method, in combination with SW-846 Methods 7061 through 7760, to quantify the leachable concentrations of the TC metals and nickel in the petitioned waste. (Analysis for TC leachable concentrations of sulfide, reactive sulfide, or reactive cyanide are not necessary because the Agency's level of regulatory concern is based on the total concentration of reactive sulfide and reactive cyanide.) Table 1 presents the maximum total constituent and leachable concentrations of the TC toxic metals, nickel, cyanide, and sulfide (total only). Table 1 also presents the maximum concentrations of reactive cyanide and sulfide.

TABLE.—MAXIMUM TOTAL CONSTITUENT AND LEACHABLE CONCENTRATIONS (PPM) FILTER CAKE

Constituents	Total constituent concentrations	OWEP leachable concentrations
Arsenic.....	0.071	<0.10
Barium.....	30.0	1.2
Cadmium.....	1.0	0.03
Chromium.....	1,800	3.0
Lead.....	4.5	0.07
Mercury.....	0.05	<0.01
Nickel.....	155	2.9
Selenium.....	<0.250	<0.050

TABLE.—MAXIMUM TOTAL CONSTITUENT AND LEACHABLE CONCENTRATIONS (PPM) FILTER CAKE—Continued

Constituents	Total constituent concentrations	OWEP leachable concentrations
Silver.....	3.0	0.03
Cyanide.....	8.2	0.41
Cyanide (reactive).....	<5	
Sulfide.....	48.0	
Sulfide (reactive).....	<20	

< Denotes that the constituents was not detected at the detection limit specified in the table.

<sup>1</sup> Calculated by assuming a dilution factor of 20 (see "Dilution from Oily Waste EP," July 29, 1984, Internal Agency Memorandum in the RCRA public docket, for details regarding the estimation of this dilution factor).

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by POP when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

As part of its original petition, POP submitted analytical data results from four composite samples collected during November 1988 to April 1989, including total constituent analyses for volatile and semi-volatile organic compounds and polychlorinated biphenyls. Only a few organic compounds were detected at trace levels, and include common laboratory contaminants. One of the volatile organic compounds, acetone was found in the third and fourth composites, and was quantified at 0.10, and 0.05 ppm respectively. Methylene chloride was found at a level of 0.03 ppm in the fourth composite. Trichloroethylene was quantified at 0.03 ppm in the third composite. The only semi-volatile compound was Bis(2-ethylhexyl) phthalate, which was quantified at 18 ppm in the first composite and 22 ppm in the second composite. While the trace levels of organic constituents detected do not appear to be of concern, as noted previously, the Agency found that the laboratory quality assurance and quality control information were not provided. However, based on their list of raw materials, their supplier's data, and MSDSs, POP demonstrated that the waste would not contain any organic toxicants at hazardous levels. Therefore, the Agency did not request additional analyses of the petitioned waste for the organic constituents, because the Agency believe that POP adequately demonstrated that their waste was not



hazardous, and the existing analytical data was consistent with POP's demonstration. POP provided test data indicating that the pH of the waste, when suspended in deionized water, was between 7.5 and 8.1 and, therefore, was not corrosive (see § 261.22). Based on analytical results provided by the petitioner, pursuant to § 260.22, the filter cake also was determined not to be ignitable or reactive (see § 261.21 and 261.23, respectively).

POP submitted a signed certification stating that, based on current annual waste generation, its maximum annual generation rate of wastewater treatment filter cake is 300 tons (approximately 300 cubic yards). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste generation rate. EPA accepts POP's certified estimate of 300 cubic yards per year of wastewater treatment filter cake.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant POP's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted portions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion.

#### D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for POP's filter cake and decided, based on review of information provided in the petition, that disposal in a landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated POP's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case

contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of POP's waste.

For the evaluation of POP's petitioned waste, the Agency used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract of POP's filter cake. The Agency's evaluation, using a maximum annual waste volume estimate of 300 cubic yards and the maximum reported leachate concentrations (see Table 1), yielded compliance-point concentrations (see Table 2) that are below the health-based levels used in delisting decision-making.

TABLE 2.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER CAKE

Constituents	Compliance-point concentrations	Levels of regulatory concern <sup>1</sup>
Barium.....	0.012	2.0
Cadmium.....	0.0003	0.005
Chromium.....	0.03	0.1
Lead.....	0.0007	0.015
Nickel.....	0.029	0.1
Silver.....	0.0003	0.2
Cyanide.....	0.0041	0.2

<sup>1</sup> See "Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions," July 1992, located in the RCRA public docket for today's notice.

As shown in Table 2, the maximum reported leachate concentrations of barium, cadmium, chromium, lead, nickel, silver, and cyanide in the filter cake yielded compliance point concentrations for these constituents below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of the remaining inorganic constituents (i.e., arsenic, mercury, and selenium) from POP's waste because they were not detected in the extract using the appropriate SW-846 analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the

Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

As also reported in Table 1, the maximum concentrations of reactive cyanide and sulfide in POP's waste are less than 5 and 20 ppm, respectively. These concentrations are below the Agency's interim standards of 250 and 500 ppm, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and sulfide levels are not of concern.

As noted previously, process information submitted by POP demonstrates that organic constituents are unlikely to be present in the waste. Furthermore, the organic analyses submitted showed only trace levels of several constituents (primarily common laboratory contaminants). However, the Agency does not believe that evaluation due to the uncertainty in the quality of the data. In any case, the Agency notes that if the total levels of these trace constituents were evaluated using the EPACML (and the Organic Leaching Model to convert total levels to leachable concentrations; see November 13, 1986, 51 FR 41084, for a detailed description), the compliance point levels would be well below health-based levels. (See the docket for today's rule for details of this evaluation).

The Agency concluded, after reviewing POP's processes and raw materials list, that no other hazardous constituents of concern, other than those tested for, are being used by POP and that no other constituents of concern are likely to be present or formed as reaction products or by-products in POP's waste. In addition, on the basis of test results and explanations provided by POP, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

#### E. Conclusion

The Agency believes that POP has successfully demonstrated that the filter cake generated from its electroplating operations is non-hazardous. The Agency believes that the samples collected by POP from the filter press were non-biased and adequately represent the filter cake. The Agency, therefore, is proposing that POP's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment based



on the above evaluation. The Agency proposes to grant an exclusion to POP Fasteners, located in Shelton, Connecticut, for its filter cake described in its petition as EPA Hazardous Waste No. F006. If the proposed rule become effective, the filter cake would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

#### F. Annual Testing

If a final exclusion is granted, the petitioner will be required to demonstrate, on an annual basis, that the characteristics of the petitioned waste remain as originally described. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 using the method specified therein. The annual analytical results (including quality control information) must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee of representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

The purpose of this testing requirement is to ensure that the quality of the petitioned waste remains as originally described by the petitioner. The Agency believes that the data obtained from the annual recharacterization of the petitioned waste will assist EPA (e.g., RCRA facility inspectors) in determining whether the petitioner's manufacturing or waste treatment processes have been significantly altered, or if the waste is more variable than originally described by the petitioner. The Agency also believes that the annual recharacterization of the petitioned waste is not overly burdensome to the petitioner and notes that these data will assist the petitioner in complying with § 262.11(c) which requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (see 40 CFR 261.24).

If made final, the exclusion will apply only to the processes and waste volume (a maximum of 300 cubic yards generated annually covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (e.g., if levels of hazardous constituents increased significantly) or increase in

waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must create waste generated either in excess of 300 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

#### III. Effective Date

This rule, if finally promulgated, will become effective immediately upon final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedure Act, 5 U.S.C. 553(d).

#### IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this

facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

#### V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

#### VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

#### List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 10, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.



2. In Table 1 of appendix IX of part 261, add the following wastestream in

alphabetical order by facility to read as follows:

### Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
POP Fasteners	Shelton, Connecticut	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 300 cubic yards) after August 21, 1992. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12), maintained on site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92-20030 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 261

[SW-FRL-4197-7]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Ampex Recording Media Corporation (Ampex), Opelika, Alabama, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in EPA regulations. This action responds to a delisting petition submitted under those regulations, which allows any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model to evaluate the potential impact of the petitioned wastes on human health and the environment, based on the waste-specific information provided by the petitioner. These models have been used

in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned wastes, once they are disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate model and fate and transport model used to evaluate the petition. Comments will be accepted until October 5, 1992. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by September 8, 1992. The request must contain the information prescribed in § 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-92-AMEP-FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS-330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M

Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The public may copy material from any regulatory docket at a cost of \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4787.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual



facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Wastes Amendments (HSWA) OF 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

#### *B. Approach Used to Evaluate This Petition*

This petition requests a delisting for listed hazardous wastes. In making the initial delisting determination, the Agency evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the wastes are non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition). EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The Agency considered whether the wastes are acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to

bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and variability of the wastes.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned wastes. The Agency determined that disposal in a landfill is the most reasonable worst-case disposal scenario for Ampex's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing the use of an organic leachate model and a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the unregulated disposal of Ampex's petitioned wastes on human health and the environment. Specifically, the Agency used the maximum estimated waste volumes and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge

which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because Ampex sends the petitioned waste (in pellet form) to an off-site, commercial disposal facility (Chemical Waste Management, Emelle, Alabama) that receives wastes from numerous other generators, the ground-water monitoring data would not be meaningful for an evaluation of the specific effect of the petitioned waste on ground water. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at hearing, if any) on today's proposal are addressed.

## **II. Disposition of Petition**

Ampex Recording Media Corporation, Opelika, Alabama.

#### *A. Petition for Exclusion*

Ampex Recording Media Corporation, located in Opelika, Alabama, manufactures magnetic recording tape for the professional audio, video, and data storage markets. Ampex is a wholly owned subsidiary of Ampex Corporation. Ampex petitioned the Agency to exclude its solvent recovery residue (powder and pellet form) presently listed as EPA Hazardous Waste No. F003—"The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and



methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures," and EPA Hazardous Waste No. F005—"The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures". Wastes classified as EPA Hazardous Waste No. F003 are listed as hazardous wastes solely because of the characteristic of ignitability (see § 261.31). The listed constituents of concern for EPA Hazardous Waste No. F005 are toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, and 2-nitropropane (see 40 CFR Part 261, appendix VII).

Ampex petitioned the Agency to exclude its wastes because it does not believe that the wastes meet the listing criteria. Ampex claims that its solvent recovery system and pelletizer generate non-hazardous wastes (powder and pellet form, respectively) because the constituents of concern in the wastes are present at low concentrations. Ampex also believes that the wastes do not contain any other constituents that would render the wastes hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and § 260.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Ampex's petition.

#### B. Background

On February 27, 1989, Ampex petitioned the Agency to exclude its solvent recovery residue (SRR) powder and SRR pellets from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, and subsequently provided additional information to complete its petition. In support of its petition, Ampex submitted: (1) Detailed descriptions and schematics of its

manufacturing and waste treatment processes;<sup>1</sup> (2) a list of raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24, nickel, antimony, cyanide, and sulfide; (4) results from total constituent analyses for 32 volatile organic and semivolatile organic consultants; (5) results from the Toxicity Characteristic Leaching Procedure (TCLP; as described in 40 CFR part 261, appendix II) analysis for the TC constituents (except for the herbicides, 2, 4-D, and 2, 4, 5-TP), antimony, and nickel; (6) results from total oil and grease analyses; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

Ampex manufactures audio and video recording tapes. Magnetic recording tapes consist of a layer of powdered magnetic material held together by a plastic binder and coated onto polyester film which provides support and mechanical strength. Coating mixes are formulated with combinations of magnetic pigments (generally iron oxides), conductive agents (carbon), head cleaning agents (alumina), binders and resins (polyurethanes, vinyl chloride/acetate), surfactants (lecithin), lubricants (silicone, stearamide), solvents (tetrahydrofuran, methyl ethyl ketone, toluene, and cyclohexanone), and catalysts and curing agents. These materials, once combined and mixed, are milled using pebble mills, ball mills, or sand mills. Coating mixes are then combined with catalyzing agents just prior to coating onto polyester film. The coated tape is then dried in multipass ovens to evaporate the solvents. These solvents are captured in Ampex's solvent recovery system. The coated film is finally calendered (pressed into thin sheets) and then slit into smaller widths. Cassette, cartridge, and reeled tapes are then fabricated using a variety of aluminum and plastic parts which are also manufactured on-site.

In addition to the solvents recovered from the drying operation noted above, Ampex uses solvents to flush and clean product pipelines, sand mills, and mix vessels. Spent solvents from these sources (expected to contain tetrahydrofuran, methyl ethyl ketone, toluene, and cyclohexanone) are then recovered in Ampex's liquid phase

solvent recovery system. Spent solvent is collected and held in two 5,000-gallon waste tanks (north and south waste tanks). Spent solvent is then fed into a mixing tank and combined with an inert material (clay). The inert material is added to act as a solvent carrier for the processing in the thin film evaporator. The solids content of the mixture is near 20 percent. The solvent/clay mixture is fed to Ampex's thin film evaporator. Solvent is recovered from the thin film evaporator vapor stream in a condenser and is recycled for reuse in the tape manufacturing process. The remaining powder residue leaves the thin film evaporator and falls onto a conveyor which transports it to a pelletizer. In the pelletizer the solid residues are mixed with city water to form small pellets which fall into a 20-cubic yard roll-off container for storage prior to disposal in an off-site landfill.

To collect representative samples from treatment processes like Ampex's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over a period of time (e.g., grab samples collected every hour and composited by shift) or a greater number of samples sufficient to represent the variability or uniformity of the waste. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

Ampex initially collected a total of four composite samples of its SRR powder on four different days between March 16, 1987 and September 10, 1988. These composite samples were comprised of grab samples collected every 2 to 4 hours during a 12-hour or 24-hour period from four different drums containing waste generated over each period. A 40-inch grain sampler was used to collect each grab sample. All four composite samples of SRR powder were analyzed for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the eight metals listed in Table 1 of § 261.24, nickel, cyanide, total oil and grease content, and the characteristics of hazardous wastes (i.e., ignitability, corrosivity, and reactivity). The four composite samples of SRR powder were also analyzed for the EP leachate concentrations (i.e., mass of a particular constituent per unit volume of extract) of the eight metals listed in Table 1 of

<sup>1</sup> Ampex has claimed portions of their manufacturing and treatment process descriptions and MSDSs as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.



§ 261.24 and nickel. In addition, these composites were analyzed for total constituent concentrations of eight organic constituents.

The Agency determined that this sampling effort was inadequate for several reasons. The Agency believes that Ampex used a sampling strategy that employed excessive compositing. In particular, one sample (*i.e.*, AMP-LUWA-01) was comprised of 40 grab samples collected over a period of 42 days. The Agency determined that this type of sampling may mask some of the day-to-day variations that may be found in the SRR powder. Therefore, although the data from the analysis of this sample would pass delisting evaluation, the Agency has not used this data in support of today's proposed decision. Ampex also did not perform analyses of all constituents likely to be present in the waste. For example, Ampex did not analyze for several polynuclear aromatic hydrocarbons (PAHs) that may potentially be present in the SRR powder, nor did it analyze for sulfide to determine if the waste was potentially reactive. In addition, Ampex only sampled the waste in the powdered form, assuming that analytical data from SRR powder samples could be used to support its petition for SRR pellets. The Agency prefers that wastes petitioned for exclusion be sampled in the "as disposed" form, subsequent to all treatment steps (chemical and physical), and thus believes that Ampex should have also provided analytical results for the SRR pellets.

For these reasons, the Agency requested that Ampex submit additional information to supplement the analytical results for the SRR powder samples considered representative (*i.e.*, those samples not overcomposited) and to complete its petition. Ampex desired to have the flexibility of disposing of the petitioned waste in either the powdered or pelletized form. Therefore, the Agency requested that Ampex collect and analyze additional samples of the waste in both powder and pellet form. In addition, at the time the Agency was requesting additional information from Ampex, it was in the process of finalizing the Toxicity Characteristic rule. This rule (see 55 FR 11798, March 29, 1990) ultimately replaced the EP toxicity test with the TCLP. Thus, the Agency requested that Ampex use the TCLP procedure to quantify the mobile levels of the metals of concern.

On April 24, 1990, Ampex submitted a revised petition which included results from four composite samples of SRR

powder and four composites of SRR pellets. These samples were collected during the period of March 1, 1990 through March 22, 1990. Using a 40-inch grain sampler, Ampex collected grab samples of the SRR powder as it existed the thin film evaporator. Each SRR powder composite sample was comprised of 5 grab samples collected over a period of 24 hours. Once all grab samples of the SRR powder were collected, these samples were combined to form a homogenous composite sample. The SRR pellet grab samples were collected as the pellets fell from the pelletizer to the conveyor transferring the waste to the waste hopper. Pellet grab samples were collected using a ½ gallon sampling cup. The pellet grab samples were then combined to form a homogenous composite sample. Each pellet sample was comprised of 5 grab samples collected over a period of 24 hours.

All eight composite samples were analyzed for the total concentrations of the TC metals, antimony, nickel, cyanide, sulfide, and total oil and grease content. These eight composite samples were also analyzed for the TCLP leachate concentrations of the TC metals, antimony, and nickel, and total constituent concentrations of 32 volatile organic and semivolatile organic constituents. In addition, five grab samples of the SRR powder were analyzed for total concentrations of cyclohexanone and tetrahydrofuran.

On May 8, 1990, staff under contract to EPA conducted a site visit to Ampex as part of the Agency's spot-check sampling and analysis program. Two samples of Ampex's SRR powder were collected as the waste exited the thin film evaporator. Two samples of the SRR pellets were collected as the pellets fell from the pelletizer to the conveyor to the roll-off box. (See below for a further discussion of the spot-check sampling and analysis effort.)

Based on its review of data in Ampex's revised petition and the spot-check visit analytical results, the Agency requested that Ampex perform some additional analyses to confirm the leachable concentrations of lead and antimony in the petitioned wastes. In addition, the Agency requested that Ampex include TCLP analyses for all organic constituents (except for the herbicides, 2,4-D, and 2,4,5-TP) listed in 40 CFR 261.24.

On January 17, 1992, Ampex submitted additional sampling and analysis information requested by the Agency. This included results from eight

composite samples of SRR powder and eight composites of SRR pellets. These sixteen composite samples were collected over a period of four weeks in September and October of 1991. The sampling techniques used by Ampex were identical to those discussed above. All sixteen composite samples were analyzed for total concentrations of oil and grease and TCLP leachate concentrations of lead and antimony. In addition, eight (four powder and four pellet) of these composites were analyzed for TCLP leachate concentrations of all the TC organic constituents (except for the herbicides, 2,4-D, and 2,4,5-TP).

Ampex claims that due to consistent manufacturing and waste treatment processes, the analytical data obtained from the three sampling events are representative of any variation in the SRR powder/pellets constituent concentrations. In addition, Ampex claims that, while magnetic tape production process mix formulations vary depending on the final product specifications, the same raw materials are used in most mix formulations.

### C. Agency Analysis

Ampex used SW-846 Methods 7040 through 7760 to quantify the total constituent concentrations of the TC metals, antimony, and nickel; and SW-846 Methods 1310 (EP) and 1311 (TCLP; as described in 40 CFR part 261, appendix II) to quantify the leachable concentrations of the TC metals, antimony, and nickel in the petitioned wastes. Ampex used "Methods for Chemical Analysis of Water and Wastes" Method 335.2 to quantify the total concentration of cyanide. Ampex used SW-846 Methods 9070 (1991 samples and 9071 (1990 samples) to quantify the total oil and grease (TOG) content of the wastes and Method 9030 to quantify the total constituent concentration of sulfide. (Analysis for the leachable concentrations of sulfide, reactive sulfide, or reactive cyanide are not necessary because the Agency's level of regulatory concern is based on the total concentration of reactive sulfide and reactive cyanide.)

Table 1 presents the maximum total concentrations of the TC metals, antimony, nickel, cyanide, and sulfide in Ampex's petitioned wastes. Table 2 presents the maximum leachate (EP or TCLP) concentrations of each of the TC metals, antimony, nickel, and cyanide.



TABLE 1.—MAXIMUM TOTAL CONCENTRATIONS—INORGANIC CONSTITUENTS (mg/kg)

[Solvent recovery residues]		
Constituents	Powder concentrations	Pellet concentrations
Antimony.....	<20	<20
Arsenic.....	1.9	1.4
Barium.....	13	<20
Cadmium.....	8	<1
Chromium.....	100	64
Lead.....	358	230
Mercury.....	0.13	<0.25
Nickel.....	178	109
Selenium.....	0.3	<0.5
Silver.....	<3	<1
Cyanide.....	<2	<2
Sulfide.....	<50	<50

< Denotes that the constituent was not detected at the detection limit specified in the table.

TABLE 2.—MAXIMUM LEACHABLE CONCENTRATIONS—INORGANIC CONSTITUENTS (ppm)

[Solvent recovery residues]		
Constituents	Powder concentrations	Pellet concentrations
Antimony.....	<0.2	0.3
Arsenic.....	<0.1	<0.01
Barium.....	0.3	0.3
Cadmium.....	0.014	<0.01
Chromium.....	<0.02	<0.02
Lead.....	0.2	0.2
Mercury.....	<0.001	<0.0005
Nickel.....	0.23	0.13
Selenium.....	<0.02	<0.005
Silver.....	<0.01	<0.01
Cyanide.....	<0.10	<0.10

< Denotes that the constituent was not detected at the detection limit specified in the table.

<sup>1</sup> Calculated by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

The detection limits presented in Tables 1 and 2 represent the lowest concentrations quantifiable by Ampex when using the appropriate SW-846 analytical methods to analyze its waste. Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.

Ampex used SW-846 Methods 8240 and 8270 to quantify the total constituent concentrations of the volatile and semivolatile organic constituent potentially present in the petitioned wastes. Table 3 presents the maximum total concentrations of all hazardous organic constituents (i.e., those listed in 40 CFR part 261, appendix VIII or 40 CFR part 264, appendix IX) detected in Ampex's petitioned wastes. Table 4 presents the maximum

leachable concentrations of detected TC organic constituents in Ampex's petitioned wastes. Using the appropriate SW-846 test methods and adequate detection limits, none of the TC organic constituents, except for pyridine, methyl ethyl ketone, and o-cresol were detected in the sample extracts.

TABLE 3.—MAXIMUM TOTAL CONCENTRATIONS—ORGANIC CONSTITUENTS (mg/kg)

[Solvent recovery residues]		
Constituents	Powder concentrations	Pellet concentrations
Cyclohexanone.....	14,600	7,500
Formaldehyde.....	12	6.7
Methyl ethyl ketone.....	62	16
Phenol.....	26	16
Toluene.....	8.1	3.4

TABLE 4.—MAXIMUM TCLP LEACHABLE CONCENTRATIONS—ORGANIC CONSTITUENTS (ppm)

[Solvent recovery residues]		
Constituents	Powder concentrations	Pellet concentrations
o-Cresol.....	0.066	0.066
Methyl ethyl ketone.....	2.36	0.969
Pyridine.....	0.772	0.26

Ampex's petition, submitted with a signed certification, stated that its maximum annual waste generation rate is 550 cubic yards in the powder form or 733 cubic yards in the pellet form. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste generation rate. Based on a recent re-evaluation of its annual waste generation rate, Ampex submitted a separate signed certification stating that its maximum annual waste generation rate would be 1,000 cubic yards in the powder or pellet form. EPA accepts Ampex's certified estimate of 1,000 cubic yards/year of either powder or pellets.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion. As noted above,

the Agency conducted a spot-check sampling visit at Ampex's facility. The results of this visit, including chemical analyses of waste samples from Ampex, are discussed later in this notice.

#### D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for Ampex's SRR powder and pellets and decided, based on review of information provided in the petition, that disposal in a landfill is the most reasonable worst-case scenario for these wastes. In addition, Ampex currently disposes of this material in a RCRA subtitle C landfill, and if excluded, Ampex plans to dispose of the waste in a subtitle D landfill. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water.

The Agency, therefore, evaluated the petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimates the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of Ampex's petitioned wastes.

In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned wastes. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the EPACML to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM as applied to the evaluation of Ampex's petitioned wastes.



For the evaluation of Ampex's petitioned wastes, the Agency used the EPACML to evaluate the mobility of antimony, barium, cadmium, lead, nickel, and cyanide from Ampex's SRR powder and pellets. The Agency's evaluation, using the maximum annual waste volume of 1,000 cubic yards for either powder or pellets and the maximum reported leachate (EP/TCLP) concentrations (see Table 2) yielded compliance-point concentrations for

these constituents (see Table 5) that are below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, chromium, mercury, selenium, and silver) from Ampex's petitioned wastes because they were not detected in the EP/TCLP extract using the appropriate SW-846 analytical methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-

detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 5.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) INORGANIC CONSTITUENTS

[Solvent recovery residues]

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern <sup>1</sup>
Antimony.....	ND	.003	.006
Barium.....	.003	.003	2
Cadmium.....	.00014	ND	.005
Lead.....	.002	.002	.015
Nickel.....	.0023	.0013	.1
Cyanide.....	.001	.001	.2

<sup>1</sup> See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and § 260.22", July 1992, located in the RCRA public docket.

ND Constituent was not detected in the leachate.

The concentrations of antimony, barium, cadmium, lead, nickel, and cyanide in the SRR powder and pellets yielded compliance point concentrations for these constituents below the health-based levels used in delisting decision-making.

As reported in Table 1, the maximum concentration of total cyanide in Ampex's waste is <2 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed 2 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. Similarly, because the maximum reported total constituent concentration of sulfide in the waste is <50 ppm (see Table 1), the concentration of reactive sulfide will be

below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency also evaluated the mobility of the hazardous organic constituents detected in Ampex's petitioned wastes using the EPACML. Because TCLP extract data were available for o-cresol, methyl ethyl ketone, and pyridine, the maximum reported TCLP extract value for these organic constituents were used as inputs in the EPACML. The Agency used the OLM to predict the leachable concentrations of other organic constituents (cyclohexanone, formaldehyde, phenol, and toluene) in the petitioned wastes for which only total constituent concentrations were

available. The resulting leachable concentrations (reported and estimated) were then used as inputs in the EPACML in order to assess the potential impact of the constituents upon the ground water. The calculated compliance-point concentrations for the seven detected organic constituents are presented in Table 6. The Agency did not evaluate the mobility of the remaining hazardous organic constituents from Ampex's petitioned wastes because they were not detected in the wastes using the appropriate analytical methods. As stated previously, the Agency will not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

TABLE 6.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) ORGANIC CONSTITUENTS

[Solvent Recovery Residues]

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern <sup>1</sup>
Cyclohexanone.....	.6	.38	200
o-Cresol.....	.00066	.00066	2
Formaldehyde.....	.014	.0094	7
Methyl ethyl ketone.....	.024	.0097	2
Phenol.....	.014	.0099	20
Pyridine.....	.0077	.0026	0.04



TABLE 6.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) ORGANIC CONSTITUENTS—Continued  
[Solvent Recovery Residues]

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern <sup>1</sup>
Toluene	.0009	.0005	1

<sup>1</sup> See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.

On the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23.

On May 8, 1990, staff under contract to EPA conducted a site visit to Ampex as part of the Agency's spot-check sampling and analysis program. A total of four representative samples of Ampex's petitioned wastes were collected. Two samples of Ampex's SRR powder were collected as the waste exited the thin film evaporator. Two samples of the SRR pellets were collected as the pellets fell from the pelletizer to the conveyor to the roll-off box. All of the spot-check samples were analyzed according to EPA test methods by a laboratory under contract to EPA. TCLP analyses of the four composite samples for the TC metals, antimony, and nickel were conducted using SWE-846 Method 1311 in combination with SW-846 Methods 8010 through 7740. The composite samples were also analyzed for total constituent concentrations of the volatile and semivolatile priority pollutants using SW-846 Methods 8240 and 8270.

The maximum reported TCLP leachate concentrations for each of the TC metals, antimony, and nickel are presented in Table 7. Table 8 presents the maximum total constituent concentrations of volatile and

semivolatile organic constituent detected in Ampex's petitioned wastes. Toluene and methylene chloride were detected in blanks for the spot-check analyses.

TABLE 7.—MAXIMUM TCLP LEACHATE CONCENTRATIONS (ppm) INORGANIC CONSTITUENTS AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder concentrations	Pellet concentrations
Antimony	0.01	0.0028
Arsenic	0.0085	0.0041
Barium	0.242	0.302
Cadmium	0.033	0.021
Chromium	0.316	0.098
Lead	2.750	0.838
Mercury	< 0.41	< 0.010
Nickel	2.44	0.202
Selenium	0.013	0.0032
Silver	< 0.008	0.019

< Denotes that the constituent was not detected at the detection limit specified in the table.

TABLE 8.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (mg/Kg) ORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder concentrations	Pellet concentrations
Acetone	4.7	0.15
Benzyl alcohol	2.5	< 20
Bis(2-ethylhexyl)phthalate	14.0	1.1

TABLE 8.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (mg/Kg) ORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES—Continued

Constituents	Powder concentrations	Pellet concentrations
4-Methylphenol	0.47	0.82
Ethyl benzene	0.041	< 0.92
Methyl ethyl ketone	27.0	16
Methylene chloride	0.67	1.3
Phenol	29.0	31
Toluene	3.8	1.3
Xylene	0.35	< 0.92

< Denotes that the constituent was not detected at the detection limit specified in the table.

For the evaluation of spot-check results for Ampex's petitioned wastes, the Agency used the EPACML model to evaluate the mobility of the TC metals (except for mercury, as it was not detected), antimony, and nickel from Ampex's petitioned wastes. The Agency's evaluation, using the maximum annual waste volume of 1,000 cubic yards for either powder or pellets and the maximum reported TCLP leachate concentrations, generated the compliance-point concentrations shown in Table 9. The Agency did not evaluate the mobility of mercury from Ampex's wastes because mercury was not detected in the TCLP extract of the spot-check samples using the appropriate SW-846 analytical methods (see Table 7).

TABLE 9.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) INORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern <sup>1</sup>
Antimony	.0001	.000028	.006
Arsenic	.000085	.000041	.05
Barium	.0024	.0030	2
Cadmium	.00033	.00021	.005
Chromium	.0032	.00098	.1
Lead	.028	.0084	.015
Nickel	.024	.0020	.1
Selenium	.00013	.00003	.05
Silver	ND	.00019	2

<sup>1</sup> See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.

ND Constituent was not detected in the leachate.



The powder and pellets exhibited antimony, arsenic, barium, cadmium, chromium, nickel, selenium, and silver levels at the compliance point below the health-based levels used in delisting decision-making. The Agency's evaluation of the spot-check analyses indicated that one sample of SRR powder contained leachable concentrations of lead at the compliance point above the health-based level used in delisting decision-making. As a result of this finding, the Agency requested that Ampex explain the high concentration of lead in the SRR powder and gave Ampex the opportunity to provide additional analyses to confirm the quantity of leachable lead in the SRR powder. The Agency provided Ampex the remaining material from the problematic SRR powder sample and Ampex reanalyzed the sample. The results from Ampex's reanalysis indicated a much lower level of leachable lead (0.13 ppm) versus the Agency's contracted lab (2.75 ppm). However, the holding time of the problematic sample (7.5 months) had exceeded the holding time suggested in SW-846 (6 months). To resolve this discrepancy, Ampex submitted the results of eight additional analyses for leachable lead on the SRR powder taken over a period of four weeks. Table 10 presents a summary of all the leachable lead data for SRR powder, including Ampex's 1987-1990 submitted data, EPA's spot-check visit data, and Ampex's additional data submitted to verify the results for leachable lead.

Ampex's additional data for samples AMP-09 through AMP-16 (as well as its reanalysis of the problematic EPA sample) show that the waste does not contain leachable lead levels that exceed the maximum allowable level for delisting. The Agency believes that the single data point that exceeded the maximum allowable concentration was an anomaly, and that this data point can be considered a statistical outlier. Furthermore, the Agency acknowledges that it did encounter some interference during the analysis of the spot-check samples and believes that the Flame AA method may have been more appropriate than the ICP method for lead in this waste matrix.

Finally, the Agency calculated a mean value for all of the lead data in Table 10 of 0.257 ppm (using value specified for the detection limit for samples with no detected lead). Using the same data, the Agency notes that the concentration of lead at the 95th percent upper confidence limit (0.512 ppm) would yield a compliance point concentration for lead (0.00512 ppm) far below the level of concern.

TABLE 10.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (ppm) (SSR POWDER)

Sample number	Leach-able lead concentration	Extraction method	Analytical method
AMP-01	<0.05	EP	Furnace AA.
AMP-02	<0.05	EP	Furnace AA.

TABLE 10.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (ppm) (SSR POWDER)—Continued

Sample number	Leach-able lead concentration	Extraction method	Analytical method
AMP-03	<0.05	EP	Furnace AA.
AMP-04	<0.05	EP	Furnace AA.
AMP-05	<0.2	TCLP	Flame AA.
AMP-06	<0.2	TCLP	Flame AA.
AMP-07	<0.2	TCLP	Flame AA.
AMP-08	<0.2	TCLP	Flame AA.
EPA-01	0.943	TCLP	ICP.
EPA-02	2.750	TCLP	ICP.
EPA-02 A <sup>1</sup>	0.13	TCLP	Furnace AA.
AMP-09	<0.008	TCLP	Furnace AA.
AMP-10	<0.008	TCLP	Furnace AA.
AMP-11	<0.008	TCLP	Furnace AA.
AMP-12	<0.008	TCLP	Furnace AA.
AMP-13	<0.008	TCLP	Furnace AA.
AMP-14	<0.007	TCLP	Furnace AA.
AMP-15	<0.007	TCLP	Furnace AA.
AMP-16	<0.007	TCLP	Furnace AA.

< Denotes that the constituent was not detected at the detection limit specified in the table.

<sup>1</sup> Ampex reanalysis of EPA-02 sample; holding time (7.5 months) exceeded recommended holding time (6 months).

The Agency also evaluated the mobility of the hazardous organic constituents detected in Ampex's waste from the spotcheck analyses using the EPACML. The Agency used the OLM to predict the leachable concentrations in the petitioned wastes in the EPACML in order to assess the potential impact of the constituents upon the ground water. The calculated compliance-point concentrations for the toxic constituents are presented in Table 11.

TABLE 11.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) ORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern <sup>1</sup>
Acetone	.0104	.001	4.0
Benzyl alcohol	.002	ND	10.0
Bis(2-ethylhexyl)phthalate	.00009	.000016	0.006
4-Methylphenol	.00059	.00087	2
Ethyl benzene	.000016	ND	0.7
Methyl ethyl ketone	.021	.014	2.0
Methylene chloride	.00065	.0010	0.005
Phenol	.015	.0154	20
Toluene	.00054	.00026	1.0
Xylene	.00007	ND	10.0

<sup>1</sup> See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.

ND Constituent was not detected.

The SRR powder and pellets exhibited all organic constituent levels at the compliance point below the health-

based levels used in delisting decision-making. Furthermore, a comparison of Ampex's sampling data with the

Agency's organic constituent spot-check data revealed relatively minor variations in the analytical data;



therefore, these spot-check visit data support the Agency's conclusion that Ampex's waste is not hazardous.

During its evaluation of Ampex's petition, the Agency also considered the potential impact of the petitioned SRR powder via non-ground water routes, specifically, with regard to airborne dispersal of waste contaminants. Since the SRR powder has a fine particle size, the Agency believes that some exposure to airborne contaminants from the waste (land-disposed) may be possible. The Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned SRR powder using a simple air dispersion model for releases from a landfill. The results of this conservative, worst-case evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Ampex's SRR powder. A complete description of the Agency's assessment of the potential impact of Ampex's waste, with regard to airborne dispersal of waste contaminants, is presented in the docket for today's proposed rule.

The Agency also considered the potential impact of the petitioned wastes via a surface water route. While some contamination of surface water is possible through runoff from the waste disposal area, the Agency believes that the concentrations of any hazardous constituents in the runoff will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic medium used for extraction in the TCLP. In addition, any transported contaminants would be further diluted in the receiving surface water body. Finally, the Agency believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur.

#### E. Conclusion

The Agency believes that Ampex's solvent recovery residues are non-hazardous. The Agency believes that the sampling procedures used by Ampex were adequate, and that the samples are representative of the day-to-day variations in constituent concentrations found in both the SRR powder and SRR pellets.

The Agency, therefore, considers Ampex's SRR powder and pellets as non-hazardous wastes, as they should not present a hazard to either human health or the environment based on the above evaluation. The Agency proposes to grant an exclusion to Ampex

Recording Media Corporation, located in Opelika, Alabama, for its F003/F005 solvent recovery residues. If the proposed rule becomes effective, the SRR powder and SRR pellets would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

#### F. Annual Testing

If a final exclusion is granted, the petitioner will be required to demonstrate, on an annual basis, that the characteristics of the petitioned wastes remain as originally described. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, sample and test representative composite samples for the constituents listed in § 261.24 using the method specified therein. The annual analytical results (including quality control information) must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

The purpose of this testing requirement is to ensure that the quality of the petitioned wastes remains as originally described by the petitioner. The Agency believes that the data obtained from the annual re-characterization of the petitioned wastes will assist EPA (e.g., RCRA facility inspectors) in determining whether the petitioner's manufacturing or waste treatment processes have been significantly altered, or if the wastes are more variable than originally described by the petitioner. The Agency also believes that the annual re-characterization of the petitioned wastes is not overly burdensome to the petitioner, and notes that these data will assist the petitioner in complying with § 262.11(c) which requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (See § 261.24).

If made final, the proposed exclusion will only apply to the processes and waste volume (maximum annual volume of 1,000 cubic yards in the powder or pellet form) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (e.g., if levels of hazardous constituents

increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated in excess of 1,000 cubic yards per year of either powder or pellets or from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

#### III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately upon promulgation under the Administrative Procedure Act, 5 U.S.C. 553(d).

#### IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be



achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

#### V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a

substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

#### VI. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

#### List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 10, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

#### Appendix XI—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Ampex Recording Media Corporation.	Opelika, Alabama..	Solvent recovery residues in the powder or pellet form (EPA Hazardous Waste Nos. F003 and F004) generated from the recovery of spent solvents from the manufacture of tape recording media (generated at a maximum annual rate of 1,000 cubic yards in the powder or pellet form) after August 21, 1992. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, analyze a representative composite sample of the waste (in its final form) for the constituents listed in § 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92-20031 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

#### 43 CFR Parts 5400, 5460, and 5470

[WO-230-6310-02-24 1A]

RIN 1004-AC03

#### Sales of Forest Products, Contract Administration; Contract Modification, Extension, Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would amend the forest product regulations to provide for more flexibility in setting due dates for periodic payments when circumstances beyond the control of the purchaser prevent contract performance

for a substantial period of time during the operating season. The rule will provide the flexibility needed by removing the specified dates for payment of periodic payments. These provisions would relieve a purchaser from the unnecessary burden of a large payment becoming due when such purchaser was prevented from generating any cash flow from a contract by certain circumstances beyond its control. This provision would not diminish the periodic payment provision's intended effect of encouraging prompt performance on timber sale contracts. The rule would also provide for reduction to 5 percent of the full amount and partial refund of the first installment during the period when the contracting officer requests interruption or delay of operations for a period in excess of 60 days during the operating season.

**DATES:** Comments must be received on or before September 21, 1992.

**ADDRESSES:** Comments may be mailed to: Director (140) Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Richard Bird, (202) 653-8864.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management (BLM) has determined that the regulations governing periodic payments and payment of the first installment on timber sale contracts could cause an unnecessary burden on entities holding those contracts. Many BLM timber sales are delayed by injunctions or administrative stays because of court actions, appeals, and consultations with the United States Fish and Wildlife Service involving endangered species and old growth. These kinds of delays



were not anticipated when the existing regulations were written. Therefore, the regulations provide no mechanism for relief to timber sale purchasers that are subject to unnecessary financial hardships due to these delays. This rule is intended to provide some flexibility for the BLM to provide relief in such situations where a purchaser is delayed from operating a timber sale contract by circumstances beyond its control.

#### Periodic Payments

On July 23, 1991 (56 FR 33830), the Bureau of Land Management published an interim final rule providing for an extension of timber sale contracts without reappraisal in certain situations. The rule was intended to provide more fairness and flexibility in granting timber sale contract extensions. Some of the comments on that rule pointed out that there was a need to provide for deferment of the periodic payments due on the first and second anniversary of some timber sale contracts. The circumstances which justify a time sale contract extension are the type that might also provide adequate justification for adjustment of the due dates for periodic payments.

Regulations were published on May 14, 1990 (55 FR 19886), requiring payment of 20 percent of the total contract price by the first anniversary of the contract for all timber sale contracts with a term 19 months or longer and payment of 40 percent of the total contract price by the second anniversary of the contract for all contracts with a term 27 months or longer. The regulations allow credit toward the payments for the value of road construction completed by the purchaser. The reason for those regulations was to encourage prompt performance on timber sale contracts and to discourage speculation. However, when the purchaser is prevented from operating the contract due to certain circumstances beyond his control, the incentives for prompt performance cannot function as intended and a financial hardship is imposed on the purchaser.

Under the terms of many timber sale contracts there are periods during the year when certain operations on the contract are not permitted, such as building roads during the winter rainy season, harvest operations during the winter in winter range areas for wildlife, thinning operations during the spring sap flows, harvest operations during the nesting period near bald eagle nests, and so forth. There are also seasons of the year when harvesting operations are not feasible due to normal adverse weather conditions, such as snow in high elevations during the winter. These

seasonal restrictions tend to shorten the time when a purchaser can actually accomplish the work required to harvest a timber sale. When a purchaser is delayed for a substantial period during the normal operating season, it may mean that operations are delayed for a whole year. During a short operating season, any delay may well mean that a purchaser has to wait until the next season to complete an operation and generate some cash flow from a timber sale contract, or qualify for a credit toward the periodic payment due from the value of road construction completed.

A periodic payment obligation on a timber sale contract could amount to a considerable financial hardship on a purchaser, if conditions beyond the control of such purchaser prevent the purchaser from completing road construction or harvesting timber from a timber sale contract for a substantial period of time. In this situation, the proposed rulemaking would allow the purchaser to request adjustment of periodic payment due dates in writing. The Contracting Officer would be required to issue a decision on such requests within 30 days of receipt of the request.

The rule will allow the necessary flexibility to defer periodic payments under certain circumstances. This rule would allow adjustment of the periodic payment due dates when a purchaser's operations are delayed for more than 60 days during an operating season by factors beyond the control of the purchaser, other than market fluctuations. Periodic payment due dates would be adjusted to provide a period of operating time equal to that time that would have been available to the purchaser, prior to the periodic payment due date, without such a delay. The rule will provide the flexibility needed by removing the specified dates for payment of periodic payments in § 5461.2(a)(3) of the existing regulations. The due dates for periodic payments will be set out in the contract.

#### Payment of First Installment

From time to time operations are delayed for substantial periods due to injunctions, or consultation and other requirements under the Endangered Species Act. Where a purchaser has large sums of money tied up in the first installment on such contracts, delays may cause financial hardship, especially on smaller companies with limited capital, who may be prevented from participating in other contracts during such extended delays.

The rule would provide for a reduction of the first installment held by

the BLM during such periods of delay. The purchaser may request and the Contracting Officer may grant a reduction to 5 percent of the full installment specified in the timber sale contract when the contracting officer requests interruption or delay of operations on a contract for period of time in excess of 60 days during the operating season. Upon notice from the contracting officer that operations may proceed, the purchaser would have 15 days to restore the first installment to the full amount. No timber could be cut or removed from the contract area before the first installment is restored to the full amount specified in the timber sale contract.

#### Definitions

This rule will also include a definition of "operating time" and "operating season" in the definitions section of the regulations, 43 CFR 5400.0-5. "Operating time" is defined as a period of time during the operating season. "Operating season" is that time of the year during which operations required to complete a timber sale contract are normally conducted in the location which encompasses the timber sale contract, or when such operations are permitted by the timber sale contract.

The definition of "operating time" and "operating season" in § 5473.4(d) of the current rule will be removed since those definitions are being added to the list of definitions in § 5400.0-5.

The comment period is being limited to 30 days on this rule in order to have a rule in place in time to provide relief to a number of purchasers in Oregon who are holding contracts that cannot be operated because of an injunction and are likely to be delayed for more than a year. The current regulations on the first installment and periodic payments may cause a considerable hardship to those purchasers. The timber industry in Oregon is in financial difficulty at this time, due in part to supply shortages caused by concern over the spotted owl and old growth timber, and any additional financial strain may cause failure of some companies and result in additional unemployment in this region.

The principal author of this proposed rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

This rule is consistent with the policy set out in the President's memorandum of January 28, 1992, and will relieve an unnecessary burden of the timber industry in the West. This rule will help to maintain a healthy forest products



industry which can provide jobs to the people in timber dependent communities of the West.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total economic effects of this rule have not been quantified, but are believed to be minimal, well below \$100 million annually. By deferring some periodic payments, the Government would lose some interest on that money, but the amount would not be significant because there would not be many contracts affected by this rule. Costs to the Government would be offset by the benefit to the industry occasioned by relieving timber sale purchasers of unnecessary financial hardship when they are delayed in performing their contract obligations due to circumstances beyond their control. This rule would make timber sale purchasers affected more competitive and possibly prevent failure of some companies by

easing such hardships. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The number of individuals or companies affected by the rule is expected to be low, and the economic effects are expected to be positive because it would reduce financial burden and improve cash flow status.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule would not authorize the taking of any property, and would not interfere with any contractual or other property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

#### List of Subjects

##### 43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

##### 43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

##### 43 CFR Part 5470

Forests and forest products, Government contracts, Public lands.

For the reasons stated above, and under the authorities cited below, parts 5400, 5460, and 5470 of group 5400, subchapter E, chapter II of the Code of Federal Regulations are amended as set forth below:

#### PART 5400—[AMENDED]

1. The authority citation continues to read:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11; 30 Stat. 414, as amended; sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 315, 1181a; 16 U.S.C. 607a; 43 U.S.C. 1701 *et seq.*

#### § 5400.0-5 [Amended]

2. Section 5400.0-5 is amended by adding the following paragraphs in alphabetical order, to read as follows:

*Operating season* means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

*Operating time* means a period of time during the operating season.

#### PART 5460—[AMENDED]

3. The authority citation continues to read:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

4. Section 5461.2 is amended by removing the introductory paragraph and revising paragraph (a) to read as follows:

##### § 5461.2 Required payment schedule.

(a)(1) For sales of less than \$500,000, installment payments shall be not less than 10 percent of the total purchase price. For sales of \$500,000 or more, installment payments shall be \$50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. A purchaser cannot apply any portion of the first installment to cover other payments due on the contract until either 60 percent of the total purchase price has been paid or road construction required by the contract, the value of which when combined with contract payments is equal to 60 percent of the total purchase price, has been completed. When either of these 60-percent levels has been reached, one-half of the first installment may be applied to other payments due on the contract.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section, when the contracting officer requests the purchaser to interrupt or delay operations for more than 60 days during the operating season the contracting officer may reduce the amount of the first installment to 5 percent of the installment listed in the timber sale contract. The purchaser shall request such reduction in writing from the contracting officer. The contracting officer will answer such requests within 30 days. The funds released may be refunded or credited to other contracts. When the contracting officer notifies the purchaser that operations may proceed, the purchaser shall have 15 days after such notification to return the first



installment to the full amount specified in the timber sale contract. Failure to pay the full first installment amount within the specified time will be considered a material breach of contract, and the contracting officer may cancel the contract. No timber may be cut or removed from the contract area until the first installment is restored to the full amount required by the contract.

(4) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments made up to that point, not including the first installment, or one-half of the first installment after the other one-half of the first installment has been released as provided in paragraph (a)(2) of this section.

(5) Timber sales contracts shall contain provisions requiring periodic payments for all sales with a contract term of 19 months or longer. For sales with a contract term of 19-26 months, one periodic payment of 20 percent of the total purchase price will be required. For all sales with a contract term of 27 months or longer, two periodic payments will be required. The first payment shall be 20 percent of the total purchase price and the second payment shall be 40 percent of the total contract price. The value of satisfactory completed road construction required by the contract may be used as a credit against the amount due for periodic payments. The due dates for the periodic payments will be specified in the timber sale contract.

(6) For the purpose of this section, the value of completed road construction shall be based on the Bureau of Land Management's appraisal allowance. Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for purposes of this section.

\* \* \*

#### PART 5470—[AMENDED]

5. The authority citation continues to read:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

#### § 5473.4 [Amended]

6. Section 5473.4 is amended by removing paragraph (d) and by redesignating paragraph (e) as paragraph (d).

Dated: July 22, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-19944 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-64-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 92-165; FCC 92-340]

#### Expansion of the Restricted Bands of Operation Applicable to Low Powered Transmitters

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would amend the rules to restrict low power, non-licensed transmitters from operating in several of the frequency bands implemented for the Global Maritime Distress and Safety System (GMDSS). The GMDSS is used for worldwide alerting, coordinated search and rescue operations and the dissemination of maritime safety information. This action will reduce the probability that such devices could cause harmful interference to GMDSS operations employed for safety-of-life.

**DATES:** Comments must be submitted on or before November 2, 1992, and reply comments on or before December 3, 1992.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John A. Reed, Office of Engineering and Technology, (202) 653-7313.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 92-165, adopted July 22, 1992 and released August 12, 1992.

The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422 1990 M Street, NW., suite 640, Washington DC 20036.

#### Paperwork Reduction

The proposed amendments will not modify the information collection requirements contained in the current regulations.

#### Summary of the Notice of Proposed Rule Making

1. In the Notice of Proposed Rule Making in this proceeding, the Commission proposes to amend part 15 of the rules to restrict the operation of low power, non-licensed transmitters within the frequency bands that were recently authorized for the Global Maritime Distress and Safety System (GMDSS).

2. The Commission has established frequency bands within which part 15 transmitters, or international radiators, are prohibited from operating. These restricted bands were established to protect against interference to services involving safety-of-life and services that use very low received signal levels.

3. The GMDSS is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems. The GMDSS is used for worldwide alerting, coordinated search and rescue operations and the dissemination of maritime safety information. The GMDSS represents more than a decade of work by the International Maritime Organization (IMO) and the International Telecommunication Union (ITU).

4. The frequency bands employed for GMDSS are used for safety-of-life purposes and, therefore, meet the criteria for protection as restricted frequency bands under part 15. International radio regulations require that the GMDSS bands be protected from other interfering sources. Accordingly, we are proposing that the list of restricted frequency bands in part 15 be expanded to contain the GMDSS bands. We have limited our proposal to include only those frequencies requiring special protection based on the ITU Radio Regulations, RRN38-11, section 44, N 3067 Mob-87, 1990. Although the U.S. implementation of the GMDSS includes several other frequencies, we are not proposing to include these because the ITU Radio Regulations do not specify the same protection requirements. Further, we have purposely specified these bands to be as narrow as possible, basing them on the allocated channel bandwidth without guardbands, in order to reduce the impact on part 15 equipment. We believe the proposed changes will have a minimal impact on the design and operation of part 15 devices, yet will provide essential protection to GMDSS operations.

5. Nine of the GMDSS frequencies contained in N 3067 Mob-87 of the ITU Radio Regulations are already covered by the existing restricted bands. The 17



GMDSS frequency bands proposed for addition to the list of restricted frequency bands in 47 CFR 15.205 are:

4123.5–4126.5 kHz  
4177.25–4177.75 kHz  
4207.25–4207.75 kHz  
6213.5–6216.5 kHz  
6267.75–6268.25 kHz  
6311.75–6312.25 kHz  
8289.5–8292.5 kHz  
8376.25–8386.75 kHz  
8414.25–8414.75 kHz  
12.2885–12.2915 MHz  
12.51975–12.52025 MHz  
12.57675–12.57725 MHz  
16.4185–16.4215 MHz  
16.69475–16.69525 MHz  
16.80425–16.80475 MHz  
156.52475–156.52525 MHz  
1645.5–1646–5 MHz

6. Transition provisions: The GMDSS is being phased in between 1992 and 1999. Because ships can start using GMDSS equipment today, we believe that the new restricted bands should become effective as soon as possible. Accordingly, we propose that any part 15 intentional radiator that is verified, or for which an application for a grant of equipment authorization is submitted, on or after 90 days from the effective date of a Report and Order in this proceeding must comply with the requirements associated with the new restricted bands of operation. Similarly, any part 15 intentional radiator that is manufactured or imported on or after 15 months from this effective date must comply with the new restricted band requirements.

7. We also propose to reduce the width of the existing restricted frequency band of 490–510 kHz to 505 kHz, effective February 1, 1999. This restricted band provides interference protection to the maritime distress frequency 500 kHz. The guardbands for the frequency are scheduled to be reduced when the GMDSS is fully implemented on February 1, 1999.

#### Initial Regulatory Flexibility Analysis

8. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a

copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

#### Reason for Action

This rule making proceeding is initiated to obtain comment regarding the addition of new restricted bands of operation, representing frequency bands employed by the Global Maritime Distress and Safety System (GMDSS) under part 80 of our rules, for part 15 intentional radiators.

#### Objectives

The Commission seeks to add these new restricted bands of operation to provide additional protection against harmful interference to the GMDSS.

#### Legal Basis

The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

#### Reporting, Recordkeeping and Other Compliance Requirements

Manufacturers of part 15 transmitters are already required to measure emissions from their products. An increase in the number of restricted frequency bands will not impact the requirement for making and reporting these measurements to the Commission. Accordingly, we do not expect any significant increase or decrease in the overall recordkeeping requirements.

#### Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

#### Description Potential Impact and Number of Small Entities Involved

Part 15 transmitters are not permitted to operate within the restricted frequency bands. Further, spurious emissions from part 15 transmitters that fall within these bands must be reduced to the general radiated emission limits in 47 CFR § 15.209. Conceivably, the addition of new restricted bands could require manufacturers to redesign their products to operate on other frequencies or to further reduce spurious emissions. However, we believe that there are few, if any, part 15 devices currently operating within these frequency bands. In addition, the majority of the proposed new restricted bands are at lower frequencies where spurious emissions from part 15 transmitters must already

comply with the general limits in 47 CFR § 15.209. Thus, we expect any impact from this proposal to be minimal.

#### Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

None.

9. For further information regarding this Notice of Proposed Rule Making, contact John Reed, Office of Engineering and Technology, (202) 653–6288.

#### List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–19957 Filed 8–20–92; 8:45 am]

BILLING CODE 6712–01–M

#### 47 CFR Part 25

#### Below 1 GHz LEO Negotiated Rulemaking Committee

August 14, 1992.

**AGENCY:** Federal Communications Commission.

**ACTION:** Public meetings of negotiated rulemaking committee.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this document advises interested persons of the fourth meeting of the Below 1 GHz LEO Negotiated Rulemaking Committee (Committee), which will be held at the Federal Communications Commission in Washington, DC.

**DATES:** September 1, 1992 at 9:30 a.m.

**ADDRESSES:** Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634–1860.

**SUPPLEMENTARY INFORMATION:** The agenda for the fourth meeting of the Committee will be to approve the minutes of the prior meeting, identify any new record information, report on the progress of the informal working group, discuss any reports of that group, and to update the agenda for the Committee meeting scheduled for September 8.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC



Docket 92-76 following the Committee's meeting on August 24, 1992.

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal Officer, before the meeting.

Federal Communications Commission.  
Donna R. Searcy,  
Secretary.

[FR Doc. 92-19963 Filed 8-20-92; 8:45 am]  
BILLING CODE 6712-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

#### Below 1 GHz LEO Negotiated Rulemaking Committee

August 14, 1992.

**AGENCY:** Federal Communications Commission.

**ACTION:** Meetings of Negotiated Rulemaking Committee.

**SUMMARY:** The Federal Communications Commission has established the Below 1 GHz LEO Negotiated Rulemaking Committee to provide recommendations on technical matters related to the establishment and regulation of a low-Earth orbiting satellite service operating in the frequency bands below 1 GHz. This document advises interested persons of upcoming meetings of an informal working group of that Committee.

**DATES:** August 13—10:00 a.m.—12:00 p.m., August 14—1:00 p.m.—4:00 p.m., August 17—9:30 a.m.—12:00 p.m., August 19—9:30 a.m.—12:00 p.m., August 20—9:30 a.m.—12:00 p.m., August 21—9:30 a.m.—12:00 p.m., August 24—1:00 p.m.—4:00 p.m., September 2—2:00 p.m.—4:00 p.m., September 3—9:30 a.m.—12:00 p.m., September 4—9:30 a.m.—12:00 p.m.

**ADDRESSES:** Federal Communications Commission, 2000 L Street, NW., rm. 258, Washington, DC (Aug. 13 & 14), and Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC (Aug. 17). All other meetings will be held at the Federal Communications Commission, 1919 M Street, NW., rm. 856, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau at (202) 634-1860.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings may appear in the *Federal Register* less than 15 days before they are scheduled to occur because these meetings were scheduled at the first meeting of the Committee on August 10-11, 1992. Members of the general public may attend these informal working group meetings. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available.

Federal Communications Commission  
Donna R. Searcy,  
Secretary.

[FR Doc. 92-19960 Filed 8-20-92; 8:45 am]  
BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 26B)]

#### Industrial Development Activities Exemption; Non-Exempt Agricultural Shippers

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rule; notice of discontinuance of proceeding.

**SUMMARY:** On April 8, 1992, the Commission published a notice of proposed rulemaking in Ex Parte No. 346 (Sub-No. 26B) further investigating whether an exemption for certain market development activities from the anti-rebating provisions of the Interstate Commerce Act should be revoked or modified for activities related to movement of agricultural commodities not exempt from the Commission's regulations. On evaluation of the comments received in response to this notice, we will not revoke or modify the aforementioned exemption, and we are discontinuing this investigation.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 926-5660 [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** In a separate proceeding, Ex Parte No. 346 (Sub-No. 26), *Association of American Railroads—Pet. To Exempt, 8 I.C.C.2d 365* (1992), we adopted a final rule exempting as a class certain market development activities from the anti-rebating provisions of the Interstate Commerce Act in order to permit railroads to engage in pre-movement, non-transportation development activities without fear of prosecution. In Ex Parte No. 346 (Sub-No. 26B) (57 FR 11929), we began an investigation of

whether the aforementioned exemption should be revoked or modified by the adoption of special disclosure and/or documentation requirements for activities related to movement of agricultural commodities not exempt from the Commission's regulations. From the comments filed in Ex Parte No. 346 (Sub-No. 26B), it is clear that no party opposes the current exemption as it applies to agricultural shippers, although one party, National Grain and Feed Association, reserves the right to file a petition seeking revocation of the exemption "if abuses occur in the future".

We find that resumption of regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. See 49 U.S.C. 10505. In particular, we find that the exemption is unlikely to create opportunities for abuse of market power or unlawful discrimination against shippers of non-exempt agricultural commodities. The intent of Congress was to have the Commission be liberal in using its exemption authority and to correct abuses after they occur. H. Conf. Rept. No. 96-1430, 96th Cong., 2d Sess. 105 (1980). We see no reason why we should not pursue this policy here. Thus, we are discontinuing this proceeding.

#### List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

**Authority:** 49 U.S.C. 10505; 5 U.S.C. 553.

Decided: August 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-20045 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB83

#### Endangered and Threatened Wildlife and Plants; Proposed Rule to Delist the Plant *Tumamoca Macdougalii*

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to remove the plant



*Tumamoca maddougalii* (Tumamoc globeberry) from the Federal List of Endangered and Threatened Plants (50 CFR 17.12). The range of this species includes south-central Arizona and extends southward into southern Sonora, Mexico. Given the large range of the species, its non-specific habitat requirements, the number of known populations, the remote nature of much of the habitat, and the ability of the species to withstand some habitat degradation, the Service believes *Tumamoc globeberry* is not in danger of extinction throughout all or a significant portion of its range. The service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by October 20, 1992. Public hearing requests must be received by October 5, 1992.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Sue Rutman, at the above address (602/379-4720).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Tumamoca maddougalii* was first collected on Tumamoc Hill, west of Tucson, Arizona, on July 31, 1908, by D.J. MacDougal, a scientist at the Carnegie Desert Laboratory. The specimen was sent to J.N. Rose, a botanist at the U.S. National Herbarium, who described it as a new genus and species in honor of the type locality and collector (Rose 1912). *Tumamoca maddougalii* remains the only species in its genus.

*Tumamoca* is a delicate perennial vine in the gourd family (Cucurbitaceae). The plants are found under trees or shrubs, which act as nurse plants and provide physical support for the vines. The stems arise from a large underground tuber, begin growth during the late summer in response to summer rains, and continue growing until the onset of cool weather and short days in November. The thin leaves have three main lobes, each divided into narrow segments. The flowers are small and pale greenish-yellow, with both male and female flowers occurring on a plant. The majority of flowers are produced in August. Mature fruits are spherical to ovoid, succulent, and bright red

(Reichenbacher 1985a, Reichenbacher 1990).

When the species was listed as endangered in 1986, thirty isolated populations of *Tumamoca* had been located in Pima County, Arizona and five were known from Sonora, Mexico. The total number of known individuals was 2,300 in the United States and 60 in Mexico (51 FR 15906). All populations were found in the Arizona Upland Subdivision of the Sonoran Desertscrub Biotic Community. The eastern and western limits of the United States range of the species were known to include the Tucson area and extend west about 193 km (120 miles) to the vicinity of Organ Pipe Cactus National Monument. The exact northern and southern range boundaries were unknown but extended about 400 km (250 miles) south of the U.S./Mexico border to the vicinity of Guaymas, Sonora.

Surveys and studies completed after the May, 1985, publication of the proposed rule to list *Tumamoca* have improved our understanding of the range and ecology of this species (Reichenbacher 1985a, Reichenbacher 1985b, Tierra Madre Consultants and Cornett & Associates 1985, Reichenbacher 1987, Biosystems Analysis 1988). Numerous surveys have been conducted on smaller tracts of land. The locations of most populations are contained in the Non-Game Data Management System of the Arizona Game and Fish Department.

Our understanding of *Tumamoca* was greatly increased by a survey and study in the U.S. and Mexico contracted by the Bureau of Reclamation (Reichenbacher 1990). The study was required by a June 30, 1986, jeopardy biological opinion under Section 7 of the Endangered Species Act on the Central Arizona Project (pipeline and canal) and was conducted during the summers of 1988 and 1989. The report summarized the current range, distribution, and ecological information on *Tumamoca*.

The U.S./Mexico survey extended the northern and southern boundaries of the known range of *Tumamoca* (Reichenbacher 1990), although the eastern and western boundaries were essentially unchanged. The southern boundary, while not yet fully defined, was extended south to within 80 kilometers (50 miles) of the northern border of Sinaloa, Mexico. The northern boundary was extended north to include southern Pinal and Maricopa Counties, Arizona. The distance between the northern and southern boundaries is more than 643 km (400 miles). Reichenbacher (1990) estimated the potential habitat of *Tumamoca* in the

U.S. and Mexico to be 72,862 square kilometers (27,959 square miles).

*Tumamoca* is less habitat specific than was believed at the time it was listed. The species occurs below 900 meters (3,000 feet) elevation in a variety of desert habitats and vegetation types, including the Arizona Upland, Lower Colorado Valley, Plains of Sonora, and Central Gulf Coast Subdivisions of the Sonoran Desertscrub Biotic Community and the Sinaloa Thornscrub Biotic Community (biotic communities defined by Turner and Brown 1982). It is found associated with a variety of nurse plants and in soil types ranging from sandy soils of valley bottoms to rocky soils of upper bajada slopes (Reichenbacher 1990). In the United States, *Tumamoca* occurs in isolated, discrete populations separated by large areas of apparently suitable but unoccupied habitat (Reichenbacher 1985a, Reichenbacher 1990). In Mexico, the species is widely scattered at a relatively low frequency throughout suitable habitat, with some areas of higher density (Reichenbacher 1990). Depending on the site, habitat conditions range from excellent or good to severely degraded or modified.

Surveys of potential habitat in the U.S. and Mexico showed the species to be more common than known at the time it was listed. Less than one percent of the potential habitat in the U.S. and Mexico was searched in 1988 and 1,242 plants were located (Reichenbacher 1990). This search involved 444 quadrats in Sonora and 261 in Arizona. All quadrats were approximately 8 hectare (20 acre) rectangles. *Tumamoca* was found in 6 Arizona quadrats (2 percent) and 89 Sonora quadrats (20 percent). The new *Tumamoca* localities in Mexico were scattered fairly evenly throughout a 52,600 square kilometer (20,300 square mile) region. A statistically reliable extrapolation of the U.S.-Mexico survey data cannot be made due to sampling constraints; however, many more plants and populations almost certainly exist. When *Tumamoca* was listed, only five populations were known in Mexico.

Reichenbacher (1990) estimates that only 2-3 percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. This estimate does not include desertscrub habitat in Mexico converted to livestock pasture. A substantial number of quadrats in Mexico had to be relocated from their originally intended sites because of unmapped, presumably recently developed, livestock pasture. Nevertheless, the large range of *Tumamoca* and the extreme remoteness of much of the habitat in both the U.S. and Mexico strongly suggests that



significant portions of the range are secure for the foreseeable future.

Javelina (*Dicotyles tajacu*) dig up the moisture-rich tubers of *Tumamoca* and are an important source of mortality. Although this may produce local population declines, it is unlikely javelina can seriously impact a species with such a broad range and widely scattered populations.

Federal government actions on this species began on December 15, 1980, when the Service published in the Federal Register (45 FR 82480) a notice of review covering plants being considered for classification as endangered or threatened. In that notice, *Tumamoca macdougalii* was included in Category 1. Category 1 species are those for which the Service presently has on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered species.

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the Secretary to make certain findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the species included in the December 15, 1980, notice of review were considered under petition, all the taxa contained in the notice, including *Tumamoca macdougalii* were treated as being newly petitioned on October 13, 1982. In 1983 and 1984, the Service found that the listing of *Tumamoca macdougalii* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. A proposed rule published May 20, 1985 (50 FR 20806), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act. The final rule listing *Tumamoca macdougalii* as endangered was published in the Federal Register on April 29, 1986 (51 FR 15906). No critical habitat was designated.

Federal involvement with *Tumamoca* subsequent to listing has included population surveys, life history and biology studies, a transplanting project, and monitoring. These projects mostly resulted from Federal activities requiring either informal or formal consultation with the Service under section 7 of the Act. Bureau of Reclamation (BR) construction of the Central Arizona Project, Tucson Aqueduct, Phase B has been the most significant Federal activity involving

*Tumamoca*. To comply with reasonable and prudent alternatives of a jeopardy biological opinion for this project issued by the Service June 30, 1986, BR purchased a 32 hectare (80 acre) preserve for *Tumamoca*, transplanted plants in the path of the aqueduct into the preserve, and monitored the success of the transplants for five years (Reichenbacher and Perrill 1991). After initial high mortality in the transplanted population, the rate of mature plant deaths declined to a number similar to the control population. Additionally, recruitment is occurring in the transplanted population and a prediction matrix analysis indicates the population should continue to rebound through the year 2000 when it will be 125 percent of the original 403 transplanted plants.

Surveys for *Tumamoca*, most often to comply with section 7 requirements, have been conducted throughout the predicted range of the species in the U.S. and Mexico. These surveys have shown *Tumamoca* to be more common and much more evenly distributed across its range than previously supposed.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. The same procedures apply to reclassifying a species or removing it from the lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tumamoca macdougalii* J.N. Rose (Tumamoc globeberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Tumamoca* populations are scattered throughout an estimated 72,862 square kilometers (27,959 square miles) of habitat in five different vegetation types. As might be expected, some habitat loss and degradation is occurring within this area. However, Reichenbacher (1990) estimated less than three percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. These losses tend to be concentrated along major watercourses or drainages, and urban centers such as Hermosillo, Sonora, and Tucson, Arizona.

Habitat loss from the Central Arizona Project was mitigated by the purchase of preserves, their fencing, and the transplanting and monitoring of plants that would have been lost to canal

construction. The transplanting effort and subsequent monitoring have yielded valuable information on *Tumamoca* biology.

The Service has no information to indicate *Tumamoca* is negatively affected when habitat is destabilized and erosion is accelerated. In fact, *Tumamoca* populations are apparently stable (C. Button, Bureau of Land Management, pers. comm., 1991) in the Avra and Vekol valleys where habitat conditions are poor and erosion is a serious problem.

Some areas in southern Arizona and Sonora are being converted from desertscrub to monotypic stands of buffelgrass (*Cenchrus ciliaris*) to provide livestock forage. Buffelgrass outcompetes native plant species, including *Tumamoca*. Conversely, natural grassy areas, especially savanna grasslands in central Sonora, have been denuded and replaced by desertscrub that may actually provide better habitat for *Tumamoca* than do grasslands (Reichenbacher 1990). This pattern of shrub encroachment due to overgrazing and conversion of desertscrub to pasture is expected to continue. Despite this habitat alteration, the future of *Tumamoca* should be secure in the large areas of undisturbed habitat that remain.

Recreation, which occurs mostly near large urban areas, has probably caused a small amount of habitat loss or degradation, most of this from off-road vehicles. A popular picnic area in the Coronado National Forest contains a population of *Tumamoca*. Despite heavy recreational use of this area, the population appears to be stable (Reichenbacher 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule to list this species identified scientific collecting as a potentially significant threat due to the rarity of the species and the small size of many populations. *Tumamoca* is now more common than previously believed, and the amount of damage that could be caused to the species from possible scientific collecting is, therefore, proportionately less. No commercial, recreational, scientific or educational overuse of any populations of this species is known to have occurred.

C. *Disease or predation.* Javelina uproot *Tumamoca* tubers to eat the succulent tissues, which either kills the plant or reduces its vigor and reproductive output. Significant damage is also done by rabbits and/or rodents. Many plants are found with their stems clipped at or above ground level. This is likely seldom fatal, but undoubtedly



affects the ability of the plant to store photosynthate and moisture for the next growing season (Reichenbacher 1985a). These predators are all native species and *Tumamoca* has undoubtedly evolved to cope with the level of damage inflicted. Perhaps the scattered populations and absence of plants in apparently suitable habitat is, in part, a response to pressure from predators.

D. *The inadequacy of existing regulatory mechanisms.* *Tumamoca* currently receives the protection of the Arizona Native Plant Law and the Endangered Species Act. It is considered a Sensitive Species by the U.S. Forest Service and the Bureau of Land Management (BLM), a provision which offers some management protection. If *Tumamoca* is removed from the Endangered Species List, the Forest Service and BLM have indicated the species will remain on their Sensitive Species lists.

E. *Other natural or manmade factors affecting its continued existence.* When *Tumamoca* was listed, low numbers and limited range were thought to make it vulnerable to natural stresses such as prolonged drought. With our present knowledge of distribution and abundance it seems doubtful any natural stresses would affect *Tumamoca* in more than a portion of its range.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the data supporting the original classification were incomplete. After conducting a review of the status of the species, the Service believes the best scientific and commercial data available at present show that removing *Tumamoca macdougalii* from the List of Endangered and Threatened Plants is warranted.

The Service believes the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the large range, number of known populations, remote habitat, ability to withstand some habitat degradation, and non-specific habitat needs, the Service believes *Tumamoca macdougalii* does not warrant the protection of the Act.

#### Effect of Rules

The proposed action would result in removal of this species from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Service to insure that any action authorized,

funded, or carried out by such agency is not likely to jeopardize the continued existence of *Tumamoca*. Federal prohibitions under section 9 of the Act would no longer apply.

To fulfill the requirement to monitor the species for five years following delisting, a Service contractor would visit selected sites with known *Tumamoca* globeberry populations throughout the U.S. and Mexico. At each site, the contractor would note whether or not the population is still extant, take photographs of the surrounding landscape, and note whether or not any significant land use changes have occurred in the area during the monitoring period. The sites would be chosen to represent a variety of habitat types and be spread across the range of the species. A form for use by field workers would be prepared by the contractor, in cooperation with the Service. Visits would occur during years one, three, and five of the monitoring period. Aerial photographs would be used to evaluate land use changes and their effects on *Tumamoca* globeberry habitat.

The BLM has established permanent plots to monitor *Tumamoca* globeberry and is committed to continuing this monitoring effort during the five-year post-delisting period. These plots are located on BLM-managed lands in the Avra and Vekol Valleys. The Coronado National Forest will continue to collect demographic data for the population in the Santa Catalina Mountains, which is the only population on National Forest lands.

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service particularly requests any information that would support retaining this species as an endangered species. Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See ADDRESSES).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### References Cited

- Biosystems Analysis, Inc. 1988. Surveys for special status plant species along the Central Arizona Project, 1987. U.S.D.I.-Bureau of Reclamation, Arizona Projects Office, Phoenix. 20 pp.
- Reichenbacher, F.W. 1985a. Status and distribution of *Tumamoca* globeberry (*Tumamoca macdougalii* Rose). Arizona State University, Department of Botany, Tempe, Arizona. 83 pp.
- Reichenbacher, F.W. 1985b. Rare plant survey of the Papago Indian Reservation Schuk Toak and San Xavier districts. Prepared for Franzoy Corey Engineers & Architects, Phoenix, Arizona. 62 pp.
- Reichenbacher, F.W. 1987. *Tumamoca* globeberry surveys on the Tohono O'odham Nation, Pima and Pinal Counties, Arizona. F.W. Reichenbacher and Associates report to Bureau of Reclamation, Arizona Projects Office, Phoenix, Arizona. 27 pp.
- Reichenbacher, F.W. 1989. The Sabino Canyon *Tumamoca* globeberry monitoring project, Santa Catalina Ranger District, Coronado National Forest. U.S. Forest Service, Coronado National Forest, Tucson, Arizona. 34 pp.
- Reichenbacher, F.W. 1990. *Tumamoca* globeberry studies in Arizona and Sonora, Mexico. Final report prepared for the U.S.D.I.-Bureau of Reclamation, Phoenix, Arizona. 109 pp.
- Reichenbacher, F.W. and R.H. Perrill. 1991. Monitoring transplanted *Tumamoca macdougalii*: Tucson Aqueduct, phase B, Central Arizona Project. Bureau of Reclamation, Arizona Projects Office, Phoenix, Arizona. 46 pp.
- Rose, J.N. 1912. *Tumamoca*, a new genus of Cucurbitaceae. Contributions from the U.S. National Herbarium 16:21.
- Tierra Madre Consultants and Cornett & Associates. 1985. San Xavier planned community biological survey and impact assessment. Prepared for Santa Cruz Properties, Inc., Cathedral City, California. 42 pp.
- Turner, R.M. and D.E. Brown. 1982. Sonoran desertscrub. Pages 181-222. In Brown, D.E. (ed.), Biotic communities of the American Southwest—United States and Mexico. Desert Plants 4(1-4).

#### Author

The primary author of this proposed rule is Susan Rutman (See ADDRESSES).



**List of Subjects in 50 CFR Part 17**

Endangered and threatened species,  
Exports, Imports, Reporting and  
recordkeeping requirements, and  
Transportation.

**Proposed Regulation Promulgation****PART 17—[AMENDED]**

Accordingly, it is hereby proposed to

amend part 17, subchapter B of chapter  
I, title 50 of the Code of Federal  
Regulations, as set forth below:

1. The authority citation for part 17  
continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C.  
1531–1544; 16 U.S.C. 4201–4245; Public Law  
99–625, 100 Stat. 3500; unless otherwise noted.

**§ 17.12 [Amended]**

2. It is proposed to amend § 17.12(h)

by removing the entry "*Tumamoca  
macedougallii*" under CUCURBITACEAE,  
from the List of Endangered and  
Threatened Plants.

Dated: August 7, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–19897 Filed 8–20–92; 8:45 am]

BILLING CODE 4310–55–M



# Notices

Federal Register

Vol. 57, No. 163

Friday, August 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### Plant Variety Protection Advisory Board; Open Meeting

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.

**DATES:** Wednesday, September 23, 1992, 8 a.m. to 4 p.m., open to the public.

**ADDRESSES:** The meeting will be held at the Bioscience Building, Building 011A, Conference Room 119, at the Beltsville Agricultural Research Center, Beltsville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kenneth H. Evans, Executive Secretary, Plant Variety Protection Advisory Board, room 500, National Agricultural Library Building, Beltsville, Maryland 20705 (301/504-5518).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include discussions of: (1) The proposed amendment of the Plant Variety Protection Act to conform to the International Convention for the Protection of New Varieties of Plants as revised on March 19, 1991, (2) plant variety protection fees, and (3) other topics.

Dated: August 17, 1992.

Kenneth C. Clayton,  
Deputy Administrator for Marketing Programs.

[FR Doc. 92-20022 Filed 8-20-92; 8:45 am]

BILLING CODE 3410-02-M

### Forest Service

#### Revised Land and Resource Management Plan for the National Forests in Florida; Baker, Columbia, Franklin, Lake, Leon, Liberty, Marion, Okaloosa, Putnam, Wakulla, and Walton Counties, FL

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised Notice; extension of time for submitting scoping comments.

**SUMMARY:** The Forest Service is extending the time for submitting scoping comments concerning the environmental analysis for the revision of the National Forests in Florida Land and Resource Management Plan. The comments will be considered in the preparation of the environmental impact statement and decisionmaking process.

**DATE:** Comments concerning the analysis should be received by September 30, 1992, to ensure timely consideration.

**FOR FURTHER INFORMATION CONTACT:** Mark Warren, Planning Staff Officer, National Forests in Florida, suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301; (904) 681-7265.

**SUPPLEMENTARY INFORMATION:** The Notice of Intent to prepare a draft and final environmental impact statement for a proposed action to revise the National Forests in Florida Land and Resource Management Plan was published in the *Federal Register* July 14, 1992 (57 FR 31171-33172). The notice stated comments concerning the analysis should be received by August 28, 1992. To respond to requests from the public to allow additional time for submitting scoping comments, the agency is extending the date from August 28 to September 30, 1992.

Dated: August 17, 1992.

R. Gary Pierson,  
Acting Regional Forester.  
[FR Doc. 92-19989 Filed 8-20-92; 8:45 am]

BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

#### Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory

Committee to the Commission will be held from 9 a.m. until 5 p.m. on Friday, September 18, 1992, at the University Place Hotel, 850 West Michigan Street, Indianapolis, Indiana. The purpose of this meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Hollis E. Hughes, Committee Chairperson, at (219) 233-9305 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 1992.

Carol-Lee Hurley,  
Chief, Regional Programs Coordination Unit.  
[FR Doc. 92-20057 Filed 8-20-92; 8:45 am]

BILLING CODE 6335-01-M

#### Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Missouri Advisory Committee to the U.S. Commission on Civil Rights will meet on September 17, 1992, from 6 p.m. until 9 p.m. and September 18, 1992, from 9 a.m. until 4 p.m. at the Hayti Heights Community Center, 100 North Martin Luther King, Jr. Street in Hayti Heights, Missouri. The purpose of the meeting is to conduct a community forum regarding information on concerns of civil rights issues in rural southeast Missouri.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253 (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.



The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92-20058 Filed 8-20-92; 8:45 am]

BILLING CODE 5335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review of Final Affirmative Countervailing Duty Determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Pure Magnesium and Alloy Magnesium from Canada, filed by the Government of Quebec with the United States Section of the Binational Secretariat on August 10, 1992.

**SUMMARY:** On August 10, 1992 the Government of Quebec filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Affirmative Countervailing Duty Determination respecting Pure Magnesium and Alloy Magnesium from Canada made by the International Trade Administration, Import Administration, Import Administration File Number C-122-815, which was published in the *Federal Register* on July 13, 1992 (57 FR 30946). In addition, Norsk Hydro Canada, Inc. filed a Request for Panel Review in this matter. The Binational Secretariat has assigned Case Number USA-92-1904-03 to these Requests.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving

imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the *Federal Register* on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the *Federal Register* on December 27, 1989 (54 FR 53165). The rules were further amended and a consolidated version of the amended Rules was published in the *Federal Register* on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A First Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on August 10, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 9, 1992);

(b) A Party, an investigating authority or other interested person that does not file a complaint may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 24, 1992); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 13, 1992.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 92-20000 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-GT-M

## National Oceanic and Atmospheric Administration

### Public Meetings To Solicit Comments of Draft Management Plan and Environmental Assessment for the Hudson River National Estuarine Research Reserve

**AGENCY:** Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the New York State Department of Environmental Conservation have made available the Draft Management Plan (DMP) and Environmental Assessment (EA) prepared for the Hudson River National Estuarine Research Reserve (HRNERR). This DMP sets forth the program missions, goals and objectives of the HRNERR, and establishes policies that will protect the natural resources and ecological integrity of the HRNERR.

The Office of Ocean and Coastal Resource Management and New York State Department of Environmental Conservation will hold public meetings at the following times and places:

September 22, 1992 at 7 p.m. at the Bear Mountain Inn, East Dining Room, Route 9W, Bear Mountain, NY.

September 23, 1992 at 7 p.m. at the Columbia Green Community College, room 209, Main Building, Route 23, Hudson, NY.

The views of interested persons and organizations on the adequacy of the DMP and EA are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the meeting when the number of the speakers can be determined. All comments received at the meeting will be considered in the



preparation of the Final Management Plan.

The public comment period for the DMP and EA will end on Monday, October 5, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patmarie S. Maher, (202) 606-4122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Copies of the draft management plan and environmental assessment are available upon request to the Sanctuaries and Reserves Division.

Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries.

Dated: August 14, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-19999 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-08-M

## National Institute of Standard and Technology

[Docket No. 920535-2135]

RIN 0693-AA99

### Proposed Federal Information Processing Standard for Standard Security Label for the Government Open Systems Interconnection Profile

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The purpose of this notice is to announce the proposed Federal Information Processing Standard (FIPS) for Standard Security Label for the Government Open Systems Interconnection Profile. This proposed standard specifies a security label for the U.S. Government Open Systems Interconnection Profile (GOSIP). Security Labels indicate sensitivity and the possible damage which may occur due to accidental or intentional disclosure, modification, or destruction of data. Labels are used to make access control decisions, to specify protective measures, and to indicate handling restrictions required by a communications security policy.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and

local governments. The purpose of this notice is to solicit such views.

This proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications from the Standards Processing, Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B64, Gaithersburg, MD 20899, telephone (301) 975-2816.

**DATES:** Comments on this proposed standard must be received on or before November 19, 1992.

**ADDRESSES:** Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Standard Security Label, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Noel Nazario, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2837.

Dated: August 17, 1992.

John W. Lyons,  
Director.

Draft

Federal Information Processing  
Standard Publication XXX

DRAFT 1992 July 15 DRAFT

### Announcing A Standard Security Label for the Government Open Systems Interconnection Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

**Name of Standard:** Standard Security Label for the Government Open Systems Interconnection Profile.

**Category of Standard:** ADP Operations, Computer Security.

**Explanation:** This Standard gives an implementation independent specification of a security label for the U.S. Government Open Systems Interconnection Profile (GOSIP). Security labels indicate sensitivity and the possible damage which may occur due to accidental or intentional disclosure, modification, or destruction of data. Labels are used to make access control decisions, to specify protective measures, and to indicate handling restrictions required by a communications security policy. The Standard Security Label is intended for use on U.S. Government OSI networks that exchange unclassified but sensitive data.

The label presented here defines security tags that may be combined into tag sets to carry security-related information. Five basic security tag types allow the representation of bit maps, attribute enumerations, attribute range selections, security level indication, and of generic information in a free form field.

A Computer Security Objects Register (CSOR), established by NIST, will provide the semantics for labels represented using this standard. Documents referencing this labeling standard shall either point to a CSOR and its procedures for registration of labels, or provide all the pertinent information regarding the label(s) to be supported.

**Approving Authority:** Secretary of Commerce.

**Maintenance Agency:** Computer Systems Laboratory, National Institute of Standards and Technology.

**Cross Index:** Federal Information Resources Management Regulations, subpart 201-20.303, Standards, and subpart 201-39.1002, Federal Standards.

"Procedures for Registration of Computer Security Objects", NIST 1992.

"U.S. Government Open Systems Interconnection Profile" (GOSIP), FIPS PUB 146-1, April 1991.

**Scope:** This standard specifies, in abstract notation, a security label for GOSIP-compliant implementations. Following this implementation independent specification, security labels may be encoded for use within various Open Systems Interconnection (OSI) protocols. The Abstract Syntax Notation 1 (ASN.1) label description provided here shall be used for security labels in Application Layer protocols. A



normative Appendix to this standard provides the label encoding for the Network and Transport Layers. Other encodings of this Standard Label may be produced for use at the remaining layers if necessary. The specification given here is limited to the syntactic aspect of the label. The semantics of security labels, as defined for different security domains, are given by a Computer Security Objects Register.

**Applicability:** The specified Standard Security Label (SSL) applies to OSI communications systems handling U.S. government unclassified but sensitive data. This security label type shall be used by OSI systems required to label data as indicated in the security chapter of GOSIP.

The SSL shall be used by OSI protocols to control access, specify protective measures, and indicate handling restrictions required by a network security policy as registered in a Computer Security Objects Register.

Complying implementations shall be capable of transmitting, receiving, and handling security labels based on the high level specification in this document.

**Specifications:** Federal Information Processing Standard (FIPS xxx) Standard Security Label for the Government Open Systems Interconnection Profile (affixed).

**Implementation Schedule:** This standard becomes effective six months after publication of a notice in the *Federal Register* of its approval by the Secretary of Commerce.

**Waiver Procedure:** Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waiver shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each

decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the *Federal Register*.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any accompanying documents, with such deletions as the agency is authorized and decides to make under 5 United States Code Section 552(b), shall be part of the procurement documentation and retained by the agency.

**Special Information:** References to this standard will appear in the security chapter of the U.S. Government Open Systems Interconnection Profile (GOSIP) in a planned version 3 and future versions. Modifications to the planned version 3 will maintain backwards compatibility with the labeling options defined for the Connectionless Network Protocol (CLNP) in the first two versions. NIST plans that security protocols added to GOSIP in the future that require security labels will only use the Standard Security Label described in this document.

**Where to Obtain Copies:** Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication XX (FIPS PUB XX), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

[FR Doc. 92-20015 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-CN-M

## National Institute of Standards and Technology

[Docket No. 920533-2133]

RIN 0693-AB04

### Approval of Three Federal Information Processing Standards (FIPS 174-176) for Telecommunications Wiring

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved three (3) new standards, which will be published as FIPS Publications 174 through 176. These newly approved standards adopt ANSI/EIA/TIA-568-1991, ANSI/EIA/TIA-569-1990, and ANSI/EIA/TIA-570-1991.

On May 6, 1991 (56 FR 20627), January 4, 1991 (56 FR 451), May 8, 1991 (56 FR 20628) notices were published in the *Federal Register* that three telecommunications wiring standards were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST and the National Communications System (NCS). On the basis of this review, NIST recommended that the Secretary approve the standards as Federal Information Processing Standards (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

Each approved standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of each standard is provided in this notice.

**EFFECTIVE DATE:** These standards are effective March 1, 1993.

**ADDRESSES:** Interested parties may purchase copies of these new standards, including the technical specifications



sections, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement section of each standards.

**FOR FURTHER INFORMATION CONTACT:** Shirley M. Radack, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

Dated: August 17, 1992.

John W. Lyons,  
Director.

#### **Draft Federal Information Processing Standards Publication 174**

(Date)

#### *Announcing the Standard for Federal Building Telecommunications Wiring Standard*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Federal Building Telecommunications Wiring Standard (FIPS PUB 174) (Former Draft Federal Standard 1090).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard, by adoption of ANSI/EIA/TIA-568-1991, Commercial Building Telecommunications Wiring Standard, specifies minimum requirements for telecommunications wiring within a building and between buildings in a campus environment. It specifies a wiring system with a recommended topology and recommended distances. It specifies copper and optical-fiber transmission media by parameters that determine performance, and specifies connectors and their pin assignments to ensure interconnectability. This standard recognizes a background precept of fundamental importance: to have a building successfully designed and provisioned for telecommunications, it is imperative that the telecommunications wiring design be incorporated during the preliminary architectural design phase.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201-20.303, Standards, and subpart 201-39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 175, Federal Building Standard for Telecommunications Pathways and Spaces (Former Draft Federal Standard 1091).

d. Federal Information Processing Standards Publication (FIPS PUB) 176, Residential and Light Commercial Telecommunications Wiring Standard (Former Draft Federal Standard 1092).

e. Future Federal Information Processing Standards Publication (FIPS PUB), Grounding and Bonding Requirements for Telecommunications in Federal Buildings (Draft Federal Standard 1093).

f. Future Federal Information Processing Standards Publication (FIP PUB), Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of these publications.

7. Objectives. The purpose of this standard is to facilitate interoperability and transportability among telecommunication facilities and systems of the Federal Government and compatibility of this facilities and systems at the computer-communications interface with data processing equipment (systems) of the Federal Government by specifying standard characteristics for building telecommunications wiring. This standard defines a generic, functional telecommunications wiring system for Federal buildings that will support a multiproduct, multivendor environment. The further purpose of this standard is to enable the planning and installation of building wiring with little knowledge of the telecommunications products that subsequently will be installed. Installation of wiring systems during building construction or major renovation is significantly less expensive and less disruptive than after the building is occupied. This standard establishes performance and technical criteria for various wiring system configurations for interfacing and connecting their respective elements. To attain a multiproduct wiring system, a

review of the performance requirements for most telecommunications services was conducted during preparation of the American National Standard. The diversity of telecommunications services currently available, coupled with the continual addition of new services, means that there may be cases where limitations to desired performance occur. To understand any such limitations, the user is advised to consult standards associated with the desired services.

8. Applicability. American National Standard/EIA/TIA-568-1991 shall be used (with the deletion of the optional specification as noted in Section 9) by all departments and agencies of the Federal Government in the planning and design of all office buildings, when FIPS 176 is not selected. This includes both the wiring of new buildings and the upgrading of existing plant. Building telecommunications wiring defined by this standard is intended to support a wide range of different Federal building sites. This includes sites with a geographical extent up to 3,000 m (9,840 ft), up to 1,000,000 square meters (approximately 10,000,000 square feet) of office space, and with a population of up to 50,000 individual users.

Telecommunications wiring systems defined by this standard are intended to have a useful life in excess of 10 years. This standard applies to the telecommunications wiring for Federal buildings that are office oriented. (The term "commercial enterprises" is used in ANSI/EIA/TIA-568-1991 to differentiate between office buildings and buildings designed for industrial enterprises.) This standard is not intended to hasten the obsolescence of building wiring currently existing in the Federal inventory; nor is it intended to provide systems engineering or applications guidelines.

9. Specifications. This FIPS adopts ANSI/EIA/TIA-568-1991 with one important change to the industry standard: in the interest of optimizing transportability, the ANSI/EIA/TIA-568 optional eight-position jack pin/pair assignments for the 100-ohm UTP telecommunications work-area outlet specified in Figure 11-2 (and referenced in paragraph 2 of Section 11.2.1) shall not be used.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective March 1, 1993, except as noted in Section 8.

Adherence to a standard that specifies standardized building wiring contributes to the economic and



efficient use of resources by avoiding proliferation of local or vendor-unique standards, and is necessary to facilitate development of interoperable inter- and intrabuilding telecommunications systems. Specification of *minimum* acceptable values for basic performance parameters provides assistance to the user in multivendor procurement. For the user requiring state-of-the-art systems performance, these values may serve as benchmarks for use in cost/performance analyses when evaluating alternate transmission media whose specifications exceed those of this standard.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the *Federal Register*.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Special Information. This standard has been reviewed by the Metrication Operating Committee of the Interagency Committee on Metric Practice, for consistency with accepted metric practice only, and is designated in *accepted metric standard*. Use of this standard in its area of applicability complies with the provision of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, section 5164) that requires Federal agencies, with certain limitations and exceptions, to use the metric system of measurement in procurements, grants, and other business-related activities. (See also 15 CFR Part 19 as amended February 1, 1991).

*Metric Data.* Where this standard contains dual dimensions, the metric data shall be controlling, and the inch-pound data shall be understood to be for information only. Nothing in this standard shall be interpreted, however, as requiring any departure from standard trade sizes, as for conduit and electrical conductors, in common use in the United States.

*Exception.* The following is substituted for section 10.2.1.1.5, Breaking Strength, of the industry standard:

The ultimate breaking strength of the completed cable, measured in accordance with ASTM D 4565 (Ref. B1.35), shall be 400 newtons (41 kgf).

*Note:* The maximum pulling tension should not exceed 110 newtons (10.3 kgf) to avoid stretching the conductor.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 174 (FIPSPUB174), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

#### Appendix

By adoption of ANSI/EIA/TIA-568-1991 [with the modification noted below], this document provides Federal departments and agencies with a

generic, standardized wiring system for office buildings and building complexes. This standardization, in conjunction with Federal Information Processing Standard 175 (Former Draft FED-STD-1091), which provides architectural specification of telecommunications pathways and spaces, will facilitate systems compatibility and transportability of terminals for Federal users. The use of these two standards will assure a quality of performance consistent with existing industry capabilities and will provide a cost-effective basis for competitive procurement.

The industry standard adopted by this Federal Information Processing Standard (Former Draft FED-STD-1090) is ANSI/EIA/TIA-568-1991, Commercial Building Telecommunications Wiring Standard, and is the result of an effort by the Telecommunications Industry Association (TIA),<sup>1</sup> in response to concern expressed by the Computer and Communications Industry Association (CCIA) over the lack of a standard on building telecommunications wiring.

This Federal Information Processing Standard adopts ANSI/EIA/TIA-568-1991 with one important change to the industry standard: in the interest of optimizing transportability, the ANSI/EIA/TIA-568-1991 vendor-specific optional eight-position jack pin/pair assignments for the 100-ohm UTP telecommunications work-area outlet connector specified in Figure 11-2 (and referenced in paragraph 2 of Section 11.2.1) of the industry standard shall *not* be used. The pin-pair assignments (and color coding) of the primary wiring scheme, illustrated in Figure 11-1, are fully compatible with terminal equipment manufactured by a majority of North American manufacturers. These assignments are fully compatible also with the single specification of eight-position outlet connector pin/pair assignments of the parallel building-wiring standard developed by the Canadian Standards Association, CSA-529. Tracking the ANSI/EIA/TIA-568 standard, the U.S. connector industry has adopted a connector designation of "T-568A" for this primary wiring scheme.

<sup>1</sup> In 1988, the Telecommunications sector (specifically, the TR- and FO-Technical Committees, Subcommittees, and Working Groups) of the Electronic Industries Association (EIA) became a part of the Telecommunications Industry Association (TIA). TIA conducts the standard-developing activities, and EIA continues to publish the resultant standards, which bear the prefix "EIA/TIA", as well as "ANSI" for those documents adopted by the American National Standards Institute. Beginning in 1992, the prefix reads "TIA/EIA."



The use of the optional pin/pair assignments of Figure 11-2 in wiring a building would result in equipment inoperability when transporting any terminal equipment from this building to any building wired to the primary specification of Figure 11.1 above.

The inverse is also true; only equipment of proprietary design (of a single manufacturer) will be operable in a building wired to the optional specification. This resultant problem of interoperability when transporting equipment could be addressed only by (a) providing adapters for all relocated terminal equipment, or (b) rewiring of the destination building (at the main distribution frame or elsewhere).

Paragraph 3, section 11.2.1 of the industry standard states: "These jack and pin-pair assignments [referring to both the primary and optional wiring schemes] are compatible with the requirements described in ISDN BRI (ISO 8877)." This is true but misleading; ISO 8877 describes which pins are to be paired, but does not specify assignment of pin/pair circuits or color coding. Thus, ISO 8877 compliance assures only mechanical compatibility.

The Federal Information Processing Standard has a special relationship to the ANSI/EIA/TIA-569-1991, Commercial Building Standard for Telecommunications Pathways and Spaces, (adopted as Federal Information Processing Standard 175, Former Draft FED-STD-1091). This latter standard addresses the reality that building wiring cannot be standardized without standardizing also the architecture of the building itself into which building wiring systems are to be installed.

Another companion standard, ANSI/EIA/TIA-570-1991, Residential and Light Commercial Telecommunications Wiring Standard, is adopted as Federal Information Processing Standard 176 (Former Draft FED-STD-1092).

During the development of this family of building telecommunications standards, significant concern was expressed, by both Government and industry, about the need for specification of electronic system grounding. This concern resulted in proposed ANSI/TIA/EIA-607, Grounding and Bonding Requirements for Telecommunications in Commercial Buildings (to be adopted as a future Federal Information Processing Standard, Draft FED-STD-1093).

The complex telecommunications building infrastructure addressed by this family of standards requires continuing documentation of all building wiring and the related pathways and spaces that contain that wiring. Recognizing the need for a standardized method of

telecommunications administration, TIA is developing ANSI/TIA/EIA-606, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings, to expedite collecting and updating of such information. This standard is to be adopted as a future Federal Information Processing Standard (Draft FED-STD-1094).

#### **Draft Federal Information Processing Standards Publication 175**

(Date)

#### *Announcing the Standard for Federal Building Standard for Telecommunications Pathways and Spaces*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Federal Building Standard for Telecommunications Pathways and Spaces (FIPS PUB 175) (Former Draft Federal Standard 1091).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard, by adoption of ANSI/EIA/TIA-569-1990, Commercial Building Telecommunications Pathways and Spaces, specifies minimum requirements for telecommunications pathways and spaces within a Federal office building and between office buildings in a campus environment. This standard recognizes a background precept of fundamental importance: to have a building successfully designed, constructed, and provisioned for telecommunications, it is imperative that the telecommunications design be incorporated during the preliminary architectural design phase.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201-20.303, Standards and subpart 201-39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 174, Federal Building Telecommunications Wiring Standard (Former Draft Federal Standard 1090).

d. Federal Information Processing Standards Publication (FIPS PUB) 176, Residential and Light Commercial Telecommunications Wiring Standard (Former Draft Federal Standard 1092).

e. Future Federal Information Processing Standards Publication (FIPS PUB), Grounding and Bonding Requirements for Telecommunications in Federal Buildings (Draft Federal Standard 1093).

f. Future Federal Information Processing Standards Publication (FIPS PUB), Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of these publications.

7. Objectives. The purpose of this standard is to specify design and construction practices for pathways and spaces, which are in support of telecommunications media and equipment, within and between Federal office buildings. Standards are given for rooms, areas, and pathways into and through which telecommunications equipment and media are to be installed.

8. Applicability. American National Standard/EIA/TIA-569-1990 shall be used by all departments and agencies of the Federal Government in the planning and design of all office buildings.

9. Specifications. This FIPS adopts ANSI/EIA/TIA-569-1990, Commercial Building Telecommunications Pathways and Spaces.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective March 1, 1993.

Adherence to a standard that specifies standardized building architectural design for the accommodation of telecommunications system wiring contributes to the economic and efficient use of resources. Such design is necessary to facilitate development of interoperable inter- and intrabuilding telecommunications systems.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b)



of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written request containing the information detailed above. Agency head may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the *Federal Register*.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Special Information. This standard has been reviewed by the Metrication Operating Committee of the Interagency Committee on Metric Practice, for consistency with accepted metric practice only, and is designated an accepted metric standard. Use of this standard in its area of applicability complies with the provision of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, section 5164) that requires Federal agencies, with certain limitations and exceptions, to use the metric system of measurement in procurements, grants, and other

business-related activities. (See also 15 CFR part 19 as amended February 1, 1991.)

**Metric Data.** Where this standard contains dual dimensions, the metric data shall be controlling, and the inch-pound data shall be understood to be for information only. Nothing in this standard shall be interpreted, however, as requiring any departure from standard trade sizes, as for conduit and electrical conductors, in common use in the United States.

**Exception.** The following is substituted for Section 8.2.1.2, *Floor Loading*, of the industry standard:

Floor loading capacity in the equipment room shall be sufficient to bear both the distributed and concentrated load of the installed equipment. The capacity for distributed loading shall be greater than 1220 kilograms per square meter. The capacity for a concentrated load shall be greater than 450 kg.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 175 (FIPSPUB175), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

#### Appendix

By adoption of ANSI/EIA/TIA-569-1990, this document provides Federal departments and agencies with an architecture for the pathways and spaces in Federal office buildings for the accommodation of the building wiring recommended in Federal Information Processing Standard 174 (Former Draft FED-STD-1990). This standardization will facilitate the use of the telecommunications wiring infrastructure specified in FIPS 174, thus enhancing the interoperability and transportability of terminals for Federal users.

The industry standard adopted by this Federal Information Processing Standard (Former Draft FED-STD-1091), ANSI/EIA/TIA-569-1990, Commercial Building Standard for Telecommunications Pathways and Spaces, is the result of a joint Canadian and United States effort by the Canadian Standards Association (CSA) and the Telecommunications Industry Association (TIA) <sup>1</sup>.

<sup>1</sup> In 1988, the Telecommunications sector (specifically, the TR- and FO-Technical Committees,

This standard has a special relationship to the ANSI/EIA/TIA-568-1991, Commercial Building Telecommunications Wiring Standard (adopted as Federal Information Processing Standard 174, Former Draft FED-STD-1090). This latter standard recognizes that building wiring cannot be standardized without standardizing also the architecture of the building itself into which building wiring systems are to be installed—the purpose of this document.

Another companion standard, ANSI/EIA/TIA-570-1991, Residential and Light Commercial Telecommunications Wiring Standard, is adopted as Federal Information Processing Standard 176 (Former Draft FED-STD-1092).

During the development of this family of building telecommunications standards, significant concern was raised, by both Government and industry, about the need to specify electronic system grounding. This concern resulted in proposed ANSI/TIA/EIA-607, Grounding and Bonding Requirements for Telecommunications in Commercial Buildings (to be adopted as a future Federal Information Processing Standard—Draft FED-STD-10930).

The complex telecommunications building infrastructure addressed by this family of standards required continuing documentation of all building wiring and the related pathways and spaces containing that wiring. Recognizing the need for a standardized method of telecommunications administration, TIA has developed proposed ANSI/TIA/EIA-606, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings, to expedite collection and updating of such information. This standard is to be adopted as a future Federal Information Processing Standard (Draft FED-STD-1094).

#### Draft Federal Information Processing Standards Publication 176

(Date)

*Announcing the Standard for Residential and Light Commercial Telecommunications Wiring Standard*

Federal Information Processing Standards Publications (FIPS PUBS) are

Subcommittees, and Working Groups) of the Electronic Industries Association (EIA) became a part of the Telecommunications Industry Association (TIA). TIA conducts the standard-developing activities, and EIA continues to publish the resultant standards, which bear the prefix "EIA/TIA", as well as "ANSI" for those documents adopted by the American National Standards Institute. Beginning in 1992, the prefix reads "TIA/EIA."



issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Residential and Light Commercial Telecommunications Wiring Standard (FIPS PUB 176) (Former Draft Federal Standard 1092).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard, by adoption of ANSI/EIA/TIA-570-1991, Residential and Light Commercial Building Telecommunications Wiring Standard, gives an overview of premises wiring, and specifies installation requirements and component technical requirements. Appendices to the industry standard provide information on line assignments in selected network interface jacks, wiring installation guidelines, component description, and references to related standards and other documents.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201-20.303, Standards, and subpart 201-39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 174, Federal Building Telecommunications Wiring Standard (Former Draft Federal Standard 1090).

d. Federal Information Processing Standards Publication (FIPS PUB) 175, Federal Building Standard for Telecommunications Pathways and Spaces (Former Draft Federal Standard 1091).

e. Future Federal Information Processing Standards Publication (FIPS PUB), Grounding and Bonding Requirements for Telecommunications in Federal Buildings (Draft Federal Standard 1093).

f. Future Federal Information Processing Standards Publication (FIPS PUB), Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying

the most recent editions of these publications.

7. Objectives. The purpose of this standard is to facilitate interoperability and transportability among telecommunication facilities and systems of the Federal Government and compatibility of these facilities and systems at the computer-communications interface with data processing equipment (systems) of the Federal Government by specifying standard characteristics for telecommunications wiring for small buildings. This standard describes a premises-wiring system intended for connecting one to four exchange access lines to various types of customer-premises equipment. This standard defines a generic, functional telecommunications wiring system for Federal buildings that will support a multiproduct, multivendor environment. Installation of wiring systems during building construction or major renovation is significantly less expensive and less disruptive than after the building is occupied.

8. Applicability. American National Standard/EIA/TIA-570-1991 shall be used by all departments and agencies of the Federal Government in the planning and design of premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when FIPS 174 is not selected. Applications include both the wiring of new buildings and the upgrading of existing plant. This standard is not intended to hasten the obsolescence of building wiring currently existing in the Federal inventory; nor is it intended to provide systems engineering or applications guidelines.

9. Specifications. This FIPS adopts ANSI/EIA/TIA-570-1991, Residential and Light Commercial Building Telecommunications Wiring Standard.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective March 1, 1993.

Adherence to a standard that specifies standardized building wiring contributes to the economic and efficient use of resources by avoiding proliferation of local or vendor-unique standards, and is necessary to facilitate development of interoperable inter- and intrabuilding telecommunications systems.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such

authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions; Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Special Information. This standard has been reviewed by the Metrication Operating Committee of the Interagency Committee on Metric Practice, for consistency with accepted metric practice only, and is designated an accepted metric standard. Use of this standard in its area of applicability complies with the provision of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, section 5164) that requires Federal agencies,



with certain limitations and exceptions, to use the metric system of measurement in procurements, grants, and other business-related activities. (See also 15 CFR Part 19 as amended February 1, 1991).

**Metric Data.** Where this standard contains dual dimensions, the metric data shall be controlling, and the inch-pound data shall be understood to be for information only. Nothing in this standard shall be interpreted, however, as requiring any departure from standard trade sizes, as for conduit and electrical conductors, in common use in the United States.

**Exception.** The following is substituted for the similar clause in lines 4 and 5 of section 6.2.1.1, Physical Requirements, of the industry standard:

When measured in accordance with ASTM D 4565 (Ref. 19), the ultimate breaking strength of the completed cable shall be 400 newtons (41 kgf) minimum. \* \* \*

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 176 (FIPSPUB176), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

## Appendix

By adoption of ANSI/EIA/TIA-570-1991, this document provides Federal departments and agencies with a generic, standardized premises-wiring system intended for connecting one to four exchange access lines to various types of customer-premises equipment. This standard may be considered complementary to Federal Information Processing Standard 174 (Former Draft FED-STD-1090), Federal Building Telecommunications Wiring Standard, which addresses building sites with a geographical extent up to 3,000 m (9,840 ft), up to 1,000,000 square meters (approximately 10,000,000 square feet) of office space, and with a population of as many as 50,000 individual users.

This standard has also a special relationship to ANSI/EIA/TIA-569-1990, Commercial Building Standard for Telecommunications Pathways and Spaces (adopted as Federal Information Processing Standard 175 (Former Draft FED-STD-1091)), the result of a joint Canadian and United States effort by the Canadian Standards Association (CSA) and the Telecommunications

Industry Association (TIA) <sup>1</sup>. This latter standard addresses the reality that building wiring cannot be standardized without standardizing also the architecture of the building itself into which building wiring systems are to be installed.

During the development of this family of building telecommunications standards, significant concern was raised, by both Government and industry, about the need for specification of electronic system grounding. This concern resulted in proposed ANSI/TIA/EIA-607, Grounding and Bonding Requirements for Telecommunications in Commercial Buildings (to be adopted as a future Federal Information Processing Standard, Draft FED-STD-1093).

The complex telecommunications building infrastructure addressed by this family of standards requires continuing documentation of all building wiring and the related pathways and spaces containing that wiring. Recognizing the need for a standardized method of telecommunications administration, TIA has developed proposed ANSI/TIA/EIA-606, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings, to expedite collection and updating of such information. This standard is to be adopted as a future Federal Information Processing Standard (Draft FED-STD-1094).

[FR Doc. 92-20014 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-CN-M

## National Oceanic and Atmospheric Administration

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on September 14-17, 1992, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA, telephone: 504-581-1300. The agenda is as follows:

<sup>1</sup> In 1988, the Telecommunications sector (specifically, the TR and FO Technical Committees, Subcommittees, and Working Groups) of the Electronic Industries Association (EIA) became a part of the Telecommunications Industry Association (TIA). TIA conducts the standard-developing activities, and EIA continues to publish the resultant standards, which bear the prefix "EIA/TIA", as well as "ANSI" for those documents adopted by the American National Standards Institute. Beginning in 1992, the prefix reads "TIA/EIA."

## Council

The Council will convene on September 16 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

**From 8:45 a.m. to 1 p.m.:** Hear public testimony on the Red Snapper 1993 total allowable catch, quota, and bag limits, the proposed mutton snapper closure, and Amendment #6 to the shrimp Fishery Management Plan.

**Note:** Testimony cards must be turned in to staff before the start of public testimony; and

**From 2:30 p.m. to 5 p.m.:** Receive the Reef Fish Management Committee report.

The Council will reconvene at 8:30 a.m. on September 17 and continue with its agenda until adjournment at 4:30 p.m. as follows:

**From 8:30 a.m. to 9:30 a.m.:** Continue the Reef Fish Management Committee report;

**From 9:30 a.m. to 3:30 p.m.:** Receive reports from the following Committees:

1. Shrimp Management Committee (9:30 a.m. to 12:30 p.m.);
2. Habitat Protection Committee (2 p.m. to 2:30 p.m.);
3. Artificial Reef Committee (2:30 p.m. to 2:45 p.m.);
4. Mackerel Management Committee (2:45 p.m. to 3:15 p.m.);
5. Spiny Lobster Management Committee (3:15 p.m. to 3:30 p.m.);

followed by Enforcement reports and Director's reports; and the Election of Chairman and Vice Chairman.

## Committees

The Artificial Reef Committee, the Shrimp Management Committee and the Spiny Lobster Committee will meet on September 14 at 10 a.m. until 5:30 p.m. Committee meetings will reconvene on September 15 at 8 a.m. with meetings of the Habitat Protection Committee and the Reef Fish Management Committee. Committee meetings will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: August 17, 1992.

**Richard H. Schaefer,**

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-20020 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-22-M



## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's newly-appointed Individual Quota Industry Committee will hold a public meeting on August 26-27, 1992 in the Pacific States Marine Fisheries Commission Conference Room, 2501 SW. First Avenue, Suite 200, Portland, OR. The meeting will begin at 8:30 a.m. on August 26, and adjourn at approximately 3:30 p.m. on August 27.

The purpose of this meeting is to work on developing an individual transferable quota program for the West Coast halibut and non-trawl sablefish fisheries.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 320-8352.

Dated: August 17, 1992.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-20021 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in China

August 17, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** August 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 614 is being increased by carryforward. As a result, the limit, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 17, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend the November 22, 1991 directive to increase the limit for Category 614 to 11,179,896 square meters<sup>1</sup>, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-19974 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-DR-F

### Adjustment of Import Limits and Sublimits for Certain Cotton and Man- Made Fiber Textile Products Produced or Manufactured in Thailand<sup>1</sup>

August 17, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** August 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits and sublimits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 17, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 1991.



month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend the directive dated November 15, 1991 to reduce the limits and sublimits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit <sup>1</sup>
Levels in Group I 313/314/315.....	66,780,000 square meters of which not more than 14,840,000 square meters shall be in Category 313, not more than 33,017,832 square meters shall be in Category 314 and not more than 21,200,000 square meters shall be in Category 315.
613/614/615.....	29,150,000 square meters of which not more than 16,960,000 square meters shall be in Categories 613/615 and not more than 16,860,057 square meters shall be in Category 614.
Sublevels in Group II 338/339.....	1,372,000 dozen.
638/639.....	1,617,000 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19973 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-DR-F

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 21, 1992.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely

Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On April 17, May 8, 22, June 12 and 26, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 13715, 19888, 21768, 25023 and 28658) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

#### Commodities

Aerosol Paint, Lacquer, 8010-00-958-8150.  
Apron, Laboratory, 8415-09-715-0450.

#### Services

Grounds Maintenance

U.S. Army Reserve Center, 2997 N. 2nd Street, Harrisburg, Pennsylvania.

Janitorial/Custodial (except annual carpet cleaning, annual floor care requirements and window washing)

Naval Surface Weapons Center, Carderock Division, Buildings 8, 121, 191, 192, 193,

Complex "L", Complex "M", Complex "N",  
Enclosed Walkways—Buildings 17 to 191 and 191 to 192, Bethesda, Maryland.

Janitorial/Custodial

Offutt Air Force Base, Nebraska (excluding Hospital, Commissary, Buildings 500 and 501 and all AAFES facilities).

Janitorial/Custodial

IRS Service Center, 11630 Caroline Road, Philadelphia, Pennsylvania.

Laundry Service

U.S. Army Aviation Support Command, CMPSC Commissary, Granite City, Illinois.

Warehousing

U.S. Army Corps of Engineers, 2600 East Carson Street, Pittsburgh, Pennsylvania.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92-20062 Filed 8-20-92; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List; Proposed Additions and Deletion

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to and deletion from procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** December 21, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

#### Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to



procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following commodity and services to the Procurement List:

#### Commodity

Towel, Machinery, Wiping, 7920-01-177-3633 (Requirements for the Palmetto, GA depot only).

Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas.

#### Services

##### Janitorial/Custodial

Airway Facilities Sector Field Office and Air Traffic Control Tower, Standiford Field, Louisville, Kentucky.

Nonprofit Agency: Custom Manufacturing Service, Inc., Louisville, Kentucky.

##### Janitorial/Custodial

Little Mountain, Little Mountain, Utah.

Nonprofit Agency: Pioneer Adult Rehabilitation Center, Clearfield, Utah.

#### Deletion

It is proposed to delete the following commodity from the Procurement List:

Button, Insignia, 8455-00-530-3700.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92-20064 Filed 8-20-92; 8:45 am]

BILLING CODE 6820-33-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Request for Extension of Approval of Information Collection Requirements—Mattress Flammability Standard

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through September 30, 1995, of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads with acceptable results. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads which they produce.

### Additional Details About the Request for Extension of Approval of Information Collection Requirements

**Agency address:** Consumer Product Safety Commission, Washington, DC 20207.

**Title of information collection:** Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR 1632.

**Type of request:** Extension of approval.

**Frequency of collection:** Varies depending upon the number of individual combinations of materials and methods of construction used to produce mattresses.

**General description of respondents:** Manufacturers and importers of mattresses and mattress pads.

**Estimated number of respondents:** 800.

**Estimated average number of hours per respondent:** 26 per year.

**Estimated number of hours for all respondents:** 20,800 per year.

**Comments:** Comments on this request for extension of approval of information collection requirements should be addressed to Shawn Canter Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 17, 1992.

Sadye E. Dunn, Secretary.

Consumer Product Safety Commission.

[FR Doc. 92-20054 Filed 8-20-92; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Establishment of the Joint Advisory Committee on Nuclear Weapons Surety

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Joint Advisory Committee on Nuclear Weapons Surety is being established.

The Joint Advisory Committee on Nuclear Weapons Surety will provide advice to the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on matters involving the surety of nuclear weapons systems, particularly as they relate to protecting against inadvertent nuclear detonation or plutonium dispersal. The Advisory Committee will undertake studies and prepare reports regarding recommendations on national policies and procedures to ensure the safe handling, stockpiling, maintenance, and risk reduction methodology of nuclear weapons.

Careful efforts will be made to ensure that the membership of the Committee will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. There will be approximately five members, to include both government and non-government individuals, who



are experts in nuclear weapons surety measures and techniques, safety precautions, and other aspects of the management and control of nuclear weapons.

For additional information regarding the Joint Advisory Committee on Nuclear Weapons Surety, please contact Stanley Keel, telephone: 703-695-7936.

Dated: August 17, 1992.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-19994 Filed 8-20-92; 8:45 am]

BILLING CODE 3810-01-M

### Renewal of the Strategic Defense Initiative Advisory Committee

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Strategic Defense Initiative Advisory Committee has been renewed, effective August 17, 1992.

The Strategic Defense Initiative Advisory Committee provides expert advice to the Secretary of Defense and the Director, Strategic Defense Initiative (SDI) Organization on all matters pertaining to SDI research and technology. The Advisory Committee: evaluates reviews of technical plans relating to SDI programs; provides recommendations concerning the emphasis, schedule and content of the programs; and, examines and evaluates technologies associated with concepts of defense against ballistic missiles.

The Strategic Defense Initiative Advisory Committee will continue to be composed of approximately 12 to 14 members who are acclaimed leaders and experts in technical areas relating to the SDI program. The members will be a well-balanced composite of individuals drawn from universities, national laboratories, industry, and other segments of the public sector, to ensure that affected interest groups will be represented and that assigned functions will be performed.

For additional information regarding the Strategic Defense Initiative Advisory Committee, please contact Ms. Gail Gallant, telephone: 703-693-1532.

Dated: August 18, 1992.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-19993 Filed 8-20-92; 8:45 am]

BILLING CODE 3810-01-M

### DEPARTMENT OF EDUCATION

#### Office of Elementary and Secondary Education; Workshops

**AGENCY:** Department of Education.

**ACTION:** Notice of application preparation workshops.

**SUMMARY:** The Department of Education will conduct an application preparation workshop to assist prospective applicants in developing applications for the Drug-Free Schools and Communities discretionary grants programs for fiscal year 1993.

**MEETING INFORMATION:** The two-day workshops will commence on October 13, 1992, and will run from 8 a.m.-5:30 p.m. (including workshop registration). There is no registration fee. Since space is limited and the number may vary with each site, pre-registration is strongly recommended. To pre-register and obtain specific information, contact the appropriate regional center workshop coordinator no later than September 11, 1992. Applicants are encouraged to attend the workshop in their region. The regional meetings are scheduled to be held as follows:

**October 13-14:** Philadelphia, Pennsylvania, at a hotel to be announced. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Northeast Regional Workshop: CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT. Interested persons should contact Larry McCullough, Northeast Regional Center for Drug-Free Schools and Communities, 12 Overton Avenue, Sayville, NY 11782. Telephone: (516) 589-7022.

**October 19-20:** Washington, DC, at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Southeast Regional Workshop: AL, DC, FL, GA, KY, NC, PR, SC, TN, VA, VI, WV. Interested persons should contact Paula Flannery, Southeast Regional Center for Drug-Free Schools and Communities, Spencerian Office Plaza, University of Louisville, Louisville, KY 40292. Telephone: (502) 588-0052.

**October 22-23:** Dallas, Texas, at the Harvey Hotel DFW, 4545 West John Carpenter Freeway, Irving, Texas 75063. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Southwest Regional Workshop: AZ, AR, CO, KS, LA, MS, NM, OK, TX, UT. Interested persons should contact Debbie Blaslar,

Southwest Regional Center for Drug-Free Schools and Communities, The University of Oklahoma, 555 Constitution, Suite 138, Norman, OK 73037-0005. Telephone: (800) 234-7972. **October 26-27:** St. Louis, Missouri, at the Henry VIII Hotel, 4690 N. Lindberg, St. Louis, Missouri 63044. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Midwest Regional Workshop: IN, IL, IA, MI, MN, MO, NE, ND, SD, WI. Interested persons should contact Donna Wagner, Midwest Regional Center for Drug-Free Schools and Communities, 1900 Spring Road, Oak Brook, IL 60521. Telephone: (708) 571-4710.

**October 29-30:** San Francisco, California, at the San Francisco Airport Marriott Hotel, 1800 Old Bayshore Highway, Burlingame, California 94010. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Western Regional Workshop: AK, American Samoa, CA, Guam, HI, ID, MT, NV, CM, OR, Republic of Palau, WA, WY. Interested persons should contact Evelyn Lockhart, Western Regional Center for Drug-Free Schools and Communities, 101 S.W. Main Street, Suite 500, Portland, OR 97204. Telephone: (503) 275-9475.

**FOR FURTHER INFORMATION CONTACT:** Carol Chelemer, Division of Drug-Free Schools and Communities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-6439. Telephone: (202) 401-1599. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area (202) 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: August 14, 1992.

John MacDonald,

*Assistant Secretary, Elementary and Secondary Education*

[FR Doc. 92-20024 Filed 8-20-92; 8:45 am]

BILLING CODE 4000-01-M

### DEPARTMENT OF ENERGY

#### Intent To Prepare the Hanford Remedial Action Environmental Impact Statement, Richland, WA

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to prepare an environmental impact statement and to conduct public scoping meetings.

**SUMMARY:** The Department of Energy (DOE) announces its intent to prepare the Hanford Remedial Action Environmental Impact Statement (HRA-



EIS) to assess the potential environmental consequences of the alternatives for conducting a remedial action program at the Hanford Site near Richland, Washington, and to conduct a series of public scoping meetings pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

The purpose of the Hanford Remedial Action Program is to achieve remediation of inactive hazardous, low-level and high-level radioactive, transuranic (TRU), and mixed (hazardous and radioactive) waste sites, according to a schedule agreed upon by DOE, the U.S. Environmental Protection Agency (EPA), and the Washington State Department of Ecology (Ecology) in the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement of TPA). The HRA-EIS will be prepared to evaluate alternatives for conducting this remedial action program. The HRA-EIS will include discussions regarding treatment, storage, and disposal options, including the location and approximate sizes and types of facilities required for managing the hazardous, radioactive, and mixed wastes from sites requiring remediation and various future site use/cleanup strategies. The HRA-EIS will evaluate a range of remediation approaches and technologies and their application to various site conditions to estimate the potential cumulative impacts associated with the different alternatives for environmental remediation, including those relevant impacts from other past, present, and reasonably foreseeable activities at the site. Actual site-by-site remediation decisions will be made through the process defined in the TPA. DOE intends its estimates to bound the impacts associated with those decisions in the HRA-EIS so that such future decisions can be made within the framework established by the HRA-EIS Record of Decision (ROD). Pollution prevention and waste minimization measures will be factored into the alternatives to be analyzed.

It is DOE policy, under DOE Order 5400.4, to integrate the values of NEPA with the procedural and documentation requirements of CERCLA, whenever practicable. However, nothing in this Notice, or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

**DATES:** The public is invited to submit written comments on the scope of the HRA-EIS. Public scoping meetings for oral comments will begin in September 1992. Dates, times, and locations of the

public scoping meetings are provided in the section entitled Locations of Public Scoping Meetings of this Notice. The public comment period will continue until November 25, 1992. To ensure consideration in preparation of the EIS, written comments should be postmarked by November 25, 1992. Comments received after this date will be considered to the extent practicable.

**ADDRESSES:** Written comments on the scope of the HRA-EIS, requests to speak at the scoping meetings, questions concerning the HRA program, and requests for copies of the draft HRA-EIS should be directed to: Mr. Roger D. Freeberg, Chief, G6-75, Environmental Programs Branch, U.S. Department of Energy, P.O. Box 550, Richland, WA 99352, (800) 786-2018, Fax comments to: (509) 943-6812.

For information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Hanford Site is a major DOE site, established in 1943 for the production of nuclear materials for national defense. Operations at the Hanford Site have generated a variety of hazardous, low-level and high-level radioactive, TRU, and mixed wastes. Past waste management practices have led to environmental problems that now require remediation under applicable Federal and State of Washington requirements and guidelines. More recently, programs at Hanford have become increasingly diverse, involving research and development for advanced reactors and renewable energy technologies. DOE has phased out defense production at Hanford and is focusing on environmental restoration, remediation technology demonstration, and waste management.

DOE established the Office of Environmental Restoration and Waste Management (EM) to consolidate the Department's environmental restoration and waste management activities. DOE is preparing a Programmatic Environmental Impact Statement (EM-PEIS) on the integrated environmental restoration and waste management program proposed for virtually all DOE facilities. The EM-PEIS will provide the primary basis for waste management and environmental restoration decision making at DOE facilities, including the Hanford Site. The EM-PEIS will not provide site-specific remedial action

alternatives or analysis of impacts related to those alternatives. The HRA-EIS will tier from the EM-PEIS to facilitate site-specific decision making and to ensure Hanford's consistency with overall DOE environmental restoration objectives based on the EM-PEIS. Because of the close timing between the HRA-EIS and the EM-PEIS, preparation of the two documents will be coordinated.

##### The Regulatory Framework

The TPA is an interagency agreement among DOE, EPA and Ecology that sets milestones to achieve coordinated cleanup of the Hanford Site over a 30-year period. The TPA provides a legal and procedural framework for site cleanup and regulatory compliance during the cleanup process. The HRA-EIS will evaluate alternatives and environmental impacts for accomplishing a remediation program of past-practice sites at Hanford that is based on the TPA.

There are a number of Federal and State laws of major importance to environmental restoration and waste management activities at Hanford. These include, among others, the Atomic Energy Act of 1954, as amended; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; and the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. The Atomic Energy Act requires the management, processing, and utilization of radioactive materials in a manner that protects public health and the environment. CERCLA requires responses to releases or threatened releases of hazardous substances into the environment, and establishes a process to clean up hazardous substances at sites that may present an imminent and substantial endangerment to public health or welfare or the environment. RCRA regulates the management of hazardous waste currently being generated, including the treatment, storage, disposal, and transportation of waste from the cleanup of releases from past and present operations that pose a threat to human health and to the environment. The TPA requires that cleanup programs at Hanford Site integrate the requirements of the CERCLA and RCRA programs.

Wastes are categorized in accordance with Federal statutes and regulations and DOE Orders. Low-level, high-level, transuranic, and mixed wastes are defined in DOE Order 5820.2A (Radioactive Waste Management). Hazardous substances under CERCLA



include any substances designated by EPA in 40 CFR part 302, including RCRA hazardous wastes. Hazardous wastes are those wastes that are defined as hazardous by the EPA regulations implementing RCRA (40 CFR part 261), and by applicable State regulations. The EPA has authorized the State of Washington Dangerous Waste Program to operate the base RCRA program in lieu of EPA, but EPA has retained authority for RCRA Corrective Action activities and certain other matters.

#### Current Practices for Environmental Restoration

A schedule and process for characterization and remediation of environmental contamination was agreed upon by DOE, EPA, and Ecology through the signing of the TPA on May 15, 1989.

Preliminary site characterization has resulted in the cataloging of over 1,100 past-practice waste sites located in four National Priority List (NPL) sites on the Hanford Site. These NPL sites were designated by the EPA and have been named the 100, 200, 300, and 1100 Area sites, respectively. These include the operating areas and the adjacent undeveloped portions of the Hanford Site. The past-practice waste sites have been grouped into 78 CERCLA or RCRA operable units, which vary widely in character. The HRA-EIS will address proposed remedial actions and the implementation of corrective measures at these past-practice waste sites, which are categorized into 74 source and 4 groundwater operable units. Site remediation will be conducted over a period of about 30 years, according to the TPA schedule. The scope of remediation activities will depend, in part, upon continuing negotiations between DOE, EPA, and Ecology, as set forth in the TPA.

The scope of the TPA includes CERCLA Remedial Investigation/Feasibility Study (RI/FS) and RCRA Facility Investigation/Corrective Measures Study (RFI/CMS) processes. The RI phase of CERCLA remediation decision making process includes activities performed to characterize the site and to determine the nature and extent of contamination. This phase also identifies the applicable or relevant and appropriate requirements (ARARs), and includes a baseline risk assessment for the proposed action. Data collected during the RI phase influence the development of the remedial action alternatives in the FS phase.

The FS includes the screening of remediation technologies, identification and screening of response alternatives, development of general performance

criteria for each alternative, and detailed evaluation and comparison of alternatives consistent with both CERCLA and NEPA. Under DOE's integration policy, the CERCLA process will incorporate the values of NEPA.

The RCRA RFI/CMS process is within the scope of the TPA because some of the operable units include RCRA treatment, storage, and disposal (TSD) facilities. The TPA integrates activities related to both RCRA corrective actions and RCRA TSD activities. The RFI/CMS is a site characterization study, analogous to the CERCLA RI/FS, that is conducted prior to taking corrective action under RCRA.

The TPA requires that cleanup programs at the Hanford Site integrate both CERCLA and RCRA requirements. The on-going investigations will provide the data needed to determine appropriate remediation methods. Future site use/cleanup strategy issues and available remediation technology will help determine appropriate levels of cleanup.

An additional strategy for addressing site cleanup, called the Hanford Past Practice Investigation strategy, has been proposed. Under this strategy, operable units would be grouped into aggregate areas. Based on site characterization using existing data, the need for early remedial action to reduce risks would be determined. Additional limited site characterization would be conducted under the limited field investigation process if uncertainties involving data or its interpretation could be reduced by the studies. This strategy contains a "bias for action," whereby sites exhibiting the highest risk potential are remediated first, while remedial action is delayed at other contaminated sites as additional studies are conducted.

Early remedial actions will be conducted where data indicate such activities are warranted.

Expedited Response Actions (ERAs) will be conducted where appropriate to reduce a short-term risk due to an actual or threatened release from a past-practice unit. ERAs are on-site response actions, either removal actions or interim corrective measures, performed to prevent suspected, existing, or potential unacceptable risks to human health or the environment. To the extent possible, ERAs will be consistent with the final HRA-EIS alternatives selected for remedial action.

Interim Remedial Measures (IRMs) are on-site responses conducted pursuant to CERCLA involving interim remedial actions instituted before initiation of final remedial action. The decision to perform IRMs may be made where extensive site characterization is

not necessary. A limited feasibility study may be required to aid in the selection of an appropriate remediation technique. DOE may need to conduct IRMs before completing the HRA-EIS.

#### Preliminary Description of Alternatives

**Proposed Action.** The proposed action is to accomplish an integrated remedial action cleanup program for inactive past-practice waste sites at the Hanford Site. The HRA-EIS will evaluate and document the potential cumulative environmental impacts associated with alternative remedial action strategies for the Environmental Restoration program at Hanford. The HRA-EIS will tier from, and be coordinated with the EM-PEIS, as appropriate. Additional NEPA reviews for individual cleanup projects will tier from the HRA-EIS and be integrated with the CERCLA process.

A CERCLA RI/FS or a RCRA RFI/CMS will be prepared for each operable unit. This process will characterize the waste types contained in each waste unit and evaluate remediation methods for each operable unit. Remedial action alternatives to be considered will depend in part on the waste type (low-level, high-level, TRU, mixed or hazardous).

The HRA-EIS will evaluate a range of reasonable remedial action alternatives to accomplish the scope of the TPA within the framework of potential future site use/cleanup strategies. The strategies will be relevant to determining both the applicable cleanup criteria for each operable unit and the degree of institutional control required to protect human health and the environment. Remedial actions will be determined on a site-by-site basis in order to comply with applicable requirements. A preliminary range of remedial action alternatives has been identified for consideration of the HRA-EIS. The range includes the following:

**Engineering and Institutional Controls.** Institutional and engineering control alternatives would be used to minimize exposure to contaminants. In the analysis of risk, active institutional controls will be assumed to become ineffective after 100 years. After that time period, DOE assumes that physical controls alone determine the potential exposure of humans, wildlife, and habitat to contaminants. This alternative would not involve transportation of waste for off-site treatment and disposal. The use of land and water resources would be restricted as necessary.

Engineering controls will include measures such as earthen control structures and vegetation, and large



highly-engineered barriers of concrete, stone, and steel. Available and new in-place treatment technologies will also be considered for control of contaminants.

Institutional controls include measures that limit access to contaminated areas, such as fences or land use restrictions. Pumping to serve as hydraulic barriers to groundwater migration and monitoring will also be considered institutional control activities.

**Full Removal and Treatment.** These alternatives will be based on remediating sites and facilities using available or new technologies to treat contaminants after removal. Treatment could be performed on-site or off-site in permitted facilities.

Pumping ground water and excavating soil are often required under these alternatives. In addition, transporting contaminated materials by road and rail is envisioned. Constructing and operating on-site or off-site treatment, storage, and disposal (TSD) facilities are also elements of these alternatives.

Although engineering controls may be used as temporary or supplemental measures to allow or enhance treatment or removal of contaminated material, institutional and engineering controls will not be considered in this alternative where effective removal and treatment methods are available.

**Combination of Treatment and Controls.** These alternatives include the use of treatment, engineering controls, institutional controls, innovative technologies, or a combination of these methods to accomplish remediation. It is anticipated that these alternatives will result in some transportation and off-site disposal of specific contaminated materials, while other materials will be left in place with varying degrees of control, depending on the risks they pose.

**No Action.** The no-action alternative will consist of an assessment of the environmental impacts if remedial action activities are not conducted. This alternative will be used to establish a baseline against which the cumulative effects of the other alternatives for remedial action may be evaluated. Implementation of the no-action alternative could result in migration of contaminants into previously uncontaminated areas. The potential risk to human health and the environment is minimal under current control and management of the Site. However, changes to the control and management of the Hanford Site in the future could result in significantly greater risks. The implementation of this alternative at some sites would be contrary to the mandates of some

applicable requirements and the TPA. Analysis of the no-action alternative is required by the Council on Environmental Quality regulations implementing NEPA. Analysis of the no-action alternative is also required on an operable unit basis by EPA's CERCLA regulations/guidelines for Feasibility Studies.

#### Identification of Environmental Issues

DOE has identified the issues listed below as topics to be addressed in the HRA-EIS. The scoping process may identify additional issues.

1. Suitable waste disposal facilities will be required for the waste that will be generated during environmental remediation. Final disposition of waste will be considered in conjunction with future site use/cleanup strategy issues.

2. Waste treatment technologies need to be developed in support of the environmental remediation program. The potential impacts, both beneficial and adverse, of implementing existing and developing technologies for waste treatment and environmental remediation need to be evaluated.

3. Analysis of the remedial action alternatives to achieve environmental remediation must include the consideration of beneficial and adverse health impacts to both workers and the public. Potential impacts to the environment, both beneficial and adverse, from remediation activities need to be evaluated.

4. Cumulative impacts associated with the remedial action alternatives for the Hanford Site need to be evaluated. The EIS will analyze the impacts from ongoing and proposed environmental restoration activities and will evaluate alternatives for such activities. The potential cumulative impacts associated with the different alternatives for environmental restoration, including those relevant impacts from other past, present, and reasonably foreseeable activities at the Hanford Site, will be included in the EIS.

5. The commitment of natural and other resources, and the socioeconomic impacts related to the implementation of a remedial action program at the Hanford Site, need to be evaluated.

6. Potential issues relative to mitigative measures and monitoring will be considered. These issues may include, but are not limited to, the establishment or restoration of habitat, potential disturbance of cultural resources, a phased approach to remediation that considers the seasonal nature of wildlife and habitat, wetlands preservation, and the effects on threatened and endangered species.

7. Potential future land use issues will be considered, such as institutional controls and project-specific cleanup criteria that will also be analyzed during the RI/FS remedial response selection process. At this time, DOE intends to maintain control of the Hanford Site.

8. Pollution prevention and waste minimization measures will be factored into the remedial action alternatives to be analyzed.

#### Public Scoping Meetings and Invitation to Comment

DOE is committed to providing opportunities for involvement by individuals and organizations in this and other DOE planning activities. To ensure that a full range of issues related to this proposal are addressed, DOE invites oral and written comments on the scope of the HRA-EIS from all interested parties. Written comments should be submitted according to the instructions provided above under **DATES and ADDRESSES**. Individuals and organizations may present oral comments at the public scoping meetings to be held in the region, as described below. Written and oral comments will be given equal weight in defining the scope of the HRA-EIS and the issues to be addressed.

The scoping meetings will begin with a welcome and introduction, followed by short presentations by DOE officials on the EIS process and the Environmental Restoration Program at Hanford and informal small group discussions on topics of concern. Individuals and organization spokespersons will then have an opportunity to present oral comments to DOE representatives. The agenda will be exercised twice a day at each location, in afternoon and evening sessions.

The informal small group discussions may cover different topics at each session. DOE representatives will present summaries of comments for each topic to all meeting participants at the conclusion of the small group discussions. These summaries will be recorded by a court reporter and will be included in the scoping meeting record.

The meetings will be chaired by a presiding officer. DOE will not conduct the scoping meetings as evidentiary hearings and will not cross-examine the speakers. However, the presiding officer and DOE representatives may ask clarifying questions. Individuals requesting to speak on behalf of an organization must identify the organization. To ensure that all who wish to speak have an opportunity, a 5-minute limit will be imposed on each



individual speaker and a 10-minute limit on speakers representing organizations. As with the summaries of comments presented in the small group discussions, these comments will be recorded by a court reporter and will become part of the scoping meeting record. Speakers are encouraged to provide a written copy of their oral comments for the record during the meeting. Written comments will also be accepted at the meeting.

After the public scoping process, an HRA-EIS Implementation Plan will be prepared, announced in the *Federal Register*, and made available to the public. The Implementation Plan will record the results of the scoping process and describe the alternatives and issues to be evaluated in the HRA-EIS. DOE intends to complete the draft HRA-EIS in mid-1994. Availability of the draft HRA-EIS will be announced in the *Federal Register*, and public comments will be solicited. Comments on the draft HRA-EIS will be considered in identifying and evaluating issues and alternatives and in preparing the final HRA-EIS. DOE expects to issue the final EIS, including responses to public comments received on the draft EIS, by mid-1995. DOE will select a remedial action alternative for the Hanford Site in the ROD to be issued no sooner than 30 days after the final EIS is issued. Following completion of the EIS and ROD, a Mitigation Action Plan (MAP) that addresses any mitigation commitments expressed in the ROD will be prepared. No action directed by the ROD that is the subject of a mitigation commitment will take place before the MAP is prepared.

#### Locations of Public Scoping Meetings

Public scoping meetings will be held beginning in September 1992 at the locations, dates, and times listed below. The meetings will also be announced in local public media, approximately 15 days in advance.

Spokane, Washington—September 29, 1992, 12:30–5 pm and 6:30–10:30 pm, West Coast Ridpath Hotel, West 515 Sprague Avenue.

Pasco, Washington—October 1, 1992, 12:30–5 pm and 6:30–10:30 pm, Red Lion Inn/Pasco, 2525 North 20th Avenue.

Seattle, Washington—October 5, 1992, 12:30–5 pm and 6:30–10:30 pm, Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue.

Portland, Oregon—October 8, 1992, 12:30–5 pm and 6:30–10:30 pm, Red Lion Hotel/Lloyd Center, 1000 North East Multnomah Street.

#### Other Related NEPA Documentation

A number of NEPA documents may be relevant to environmental restoration issues at the Hanford Site and be of interest to the public. These documents have been planned by (or prepared in consultation with) DOE, and are in various stages of preparation or have been completed. These documents include, but are not limited to:

##### 1. Final Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes, Hanford Site, Richland, Washington

DOE/EIS-0113, December 1987. U.S. Department of Energy, Washington, DC. The Hanford Defense Waste Environmental Impact Statement (HDW-EIS) was prepared to develop a waste disposal alternative for the high-level, transuranic, and tank waste generated by defense production activities at the Hanford Site. In the ROD, issued in April 1988, DOE identified the preferred alternative based on the Final HDW-EIS. This alternative consists of proceeding with disposal actions for double-shell tank waste and retrievably-stored and newly generated TRU-contaminated solid waste, but deferring disposal decisions on single-shell tank waste, pre-1970 buried suspect TRU-contaminated solid waste, and TRU-contaminated soil sites. This alternative includes such actions as construction and operation of the Hanford Waste Vitrification Plant (HWVP), a pretreatment facility, a group facility for disposal of the double-shell tank waste, and construction and operation of a waste receiving and packaging facility to prepare TRU-contaminated solid wastes for shipment to an off-site TRU waste repository for disposal (projected to be the Waste Isolation Pilot Plant near Carlsbad, NM). DOE plans to announce shortly its intention to prepare an EIS to address tank safety issues and to assess the impacts of disposal alternatives for single-shell tank waste generated by defense production activities at the Hanford Site.

##### 2. Final Environmental Impact Statement, Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, Washington

DOE/EIS-0119. U.S. Department of Energy, Washington, DC. The Surplus Production Reactor Decontamination and Decommissioning Environmental Impact Statement (SPRD-EIS) was prepared to analyze the potential impacts of decommissioning the eight surplus production reactors at the

Hanford Site. DOE plans to issue the final EIS in 1992.

##### 3. The Hanford Reach Study (P.L. 100-605) Comprehensive River Conservation Study Environmental Impact Statement—Hanford Reach of the Columbia River

The Hanford Reach EIS is being prepared by the National Park Service (in consultation with DOE) to determine the preferred alternative to protect the natural qualities of the Hanford Reach of the Columbia River. Decisions reached in this document may affect future site use/cleanup strategy issues on areas of the Hanford Site immediately adjacent to, and north of, the Columbia River. The DEIS was issued for public comment on July 10, 1992. The comment period will close on October 9, 1992.

##### 4. Programmatic Environmental Impact Statement for Environmental Restoration and Waste Management (EM-PEIS)

The EM-PEIS is being prepared to analyze DOE's proposed integrated environmental restoration and waste management program and alternatives. It will provide a basis for waste management practices and remediation strategies at all DOE facilities, but it will not discuss site-specific remedial action alternatives or their impacts. The HRA-EIS will be coordinated with and tier from the EM-PEIS to assess site-specific issues, alternatives, and impacts of environmental restoration.

##### 5. Programmatic Environmental Impact Statement for Reconfiguration of the Nuclear Weapons Complex (NWC-PEIS)

The NWC-PEIS is being prepared to analyze long-term reconfiguration strategies and evaluate those strategies against the consequences of maintaining the existing facilities. Implementation of a reconfiguration strategy could change Hanford's missions, and thereby change waste management requirements. DOE recently announced its decision to incorporate analysis of proposed new tritium production capacity in the NWC-PEIS.

These documents and other related information are or will be available at the DOE Public Reading Room, 825 Jadwin Avenue, Federal Building, room 157, Richland, WA 99352, Monday through Friday, during business hours (8 am–12 pm, 1–4:30 pm). When completed, copies of the scoping meeting transcripts, the implementation plan, and major references used in preparing the HRA-EIS will also be available



during normal business hours at the DOE Public Reading Room. The transcript of each scoping meeting will be retained by DOE, and a copy of each scoping meeting transcript will be made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, during business hours (9 am-4 pm). In addition, anyone may make arrangements to purchase a copy.

Those persons who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft EIS for review and comment may notify Roger Freeberg at the address listed above.

Issued in Washington, DC, this 14th day of August 1992.

Paul L. Ziemer,

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 92-20048 Filed 8-20-92; 8:45 am]

BILLING CODE 6450-01-M

### Hydrogen Technical Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

**NOTICE:** Hydrogen Technical Advisory Panel (HTAP).

**DATES AND TIMES:** Monday, September 14, 1992, 1 p.m.-5:30 p.m. Tuesday, September 15, 1992, 8:30 a.m.-4:30 p.m.

**PLACE:** Doubletree Hotel Crystal City, Potomac View Room, 300 Army Navy Drive, Arlington, VA 22202.

**CONTACT:** Russell Eaton, Designated Federal Official, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586-1506.

**PURPOSE:** The Hydrogen Technical Advisory Panel will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101-566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

### Tentative Agenda

*Monday, September 14, 1992*

- 1 p.m. Introductions—All
- 1:15 p.m. Opening Remarks/Agenda—Chm. J. Birk, EPRI
- 1:45 p.m. DOE Report—R. Eaton/Other 5 Year Plan
- Response to HTAP's Guidance
- Funding
- New Business
- 2:30 p.m. Break
- 3 p.m. Vision I: Long-Term Strategic Outlook—DOE
- 3:30 p.m. Vision II: Canadian Perspective—HIC
- 4 p.m. Vision III: Hydrogen/Electricity: Complementary Energy Carriers NHA
- 4:30 p.m. Public Comments: Vision/Strategy for Hydrogen—Public
- 5:30 p.m. Adjourn

*Tuesday, September 15, 1992*

- 8:30 a.m. Continental Breakfast
- 9 a.m. Plans and Next Meeting—Chm. J. Birk
- 9:15 a.m. R&D Review—NASA—A. Bain
- 9:45 a.m. Discussion of NASA Program—All
- 10:15 a.m. Break
- 10:45 a.m. Discussion of Visions/Develop Consensus—All
- 12:15 p.m. Consensus Vision/Analyses Needs—Chm. J. Birk
- 12:30 p.m. Lunch—All
- 1:30 p.m. R&D Review-Biofuels from Solid Wastes—D. Walter, DOE
- 2 p.m. R&D Review-Biomass Gasification for Liquid Fuels—R. Moorer, DOE
- 2:30 p.m. Break
- 3 p.m. Concluding Discussion—All
- 4:30 p.m. Adjourn

### Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement (10 minutes or less) pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 pm (e.d.t.) Monday, September 7, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal

Officer at the address shown above before 5 p.m. (e.d.t.) Monday, September 7, 1992, to assure it is considered by Task Force members during the meeting.

### Minutes

A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: August 17, 1992.

Howard H. Raiken,

*Advisory Committee Management Officer.*

[FR Doc. 92-20049 Filed 8-20-92; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket Nos. ST92-4200-000 through ST92-4617-000]

### Transok Gas Transmission Co.; Self-Implementing Transactions

July 30, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.<sup>1</sup>

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate

<sup>1</sup> Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.



pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under

§ 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by

a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,  
Secretary.

Docket number <sup>1</sup>	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity <sup>1</sup>	Aff. Y/ A/N <sup>2</sup>	Rate sch.	Date commenced	Projected termination date
ST92-4200	Transok Gas Transmission Co.	Natural Gas P/L Co. of America.	06-01-92	C	20,000	N	I	03-1-91	Indef.
ST92-4201	Williston Basin Inter. P/L Co.	Amerada Hess Corp.	06-01-92	G-S	25,000	N	I	05-01-92	06-30-92
ST92-4202	United Gas Pipe Line Co.	Polaris Pipeline Corp.	06-01-92	G-S	20,960	N	I	05-12-92	09-09-92
ST92-4203	United Gas Pipe Line Co.	Graham Energy Marketing Corp.	06-01-92	G-S	125,760	N	I	05-18-92	09-15-92
ST92-4204	Florida Gas Transmission Co.	Florida Public Utilities Co.	06-01-92	G-S	5,500	N	I	05-01-92	05-31-92
ST92-4205	Midwestern Gas Transmission Co.	Peoples Gas Light & Coke Co.	06-01-92	B	20,000	N	I	05-01-92	Indef.
ST92-4206	Tennessee Gas Pipeline Co.	Chautauga Energy Marketing, Inc.	06-01-92	G-S	500	N	I	05-11-92	Indef.
ST92-4207	Tennessee Gas Pipeline Co.	Capital Gas Distribution Co., Inc.	06-01-92	B	2,000,000	N	I	05-02-92	Indef.
ST92-4208	Natural Gas P/L Co. of America.	Entex, Div. of Arkla, Inc.	06-01-92	B	10,000	N	F	05-01-92	11-30-94
ST92-4209	Natural Gas P/L Co. of America.	Iowa Electric Light and Power Co.	06-01-92	B	50,000	N	I	05-01-92	Indef.
ST92-4210	United Gas Pipe Line Co.	Fina Natural Gas Co.	06-01-92	G-S	104,800	N	I	05-20-92	09-17-92
ST92-4211	United Gas Pipe Line Co.	Endevco Oil & Gas Co.	06-01-92	G-S	26,200	N	I	05-21-92	09-18-92
ST92-4212	United Gas Pipe Line Co.	Exxon Corp.	06-01-92	G-S	104,800	N	I	05-01-92	08-29-92
ST92-4213	United Gas Pipe Line Co.	BG Exploration America, Inc.	06-01-92	G-S	52,400	N	I	05-13-92	09-10-92
ST92-4214	United Gas Pipe Line Co.	Chevron U.S.A. Inc.	06-01-92	G-S	104,800	N	I	05-12-92	09-09-92
ST92-4215	United Gas Pipe Line Co.	Cowboy Pipeline Service Co.	06-01-92	G-S	5,240	N	I	05-18-92	09-15-92
ST92-4216	United Gas Pipe Line Co.	Texaco Gas Marketing Inc.	06-01-92	G-S	209,600	N	I	05-21-92	09-18-92
ST92-4217	United Gas Pipe Line Co.	Shell Gas Trading Co.	06-01-92	G-S	209,600	N	I	05-20-92	09-17-92
ST92-4218	Gateway Pipeline Co.	Mobil Natural Gas Inc.	06-01-92	G-S	400,000	N	I	05-13-92	09-10-92
ST92-4219	United Gas Pipe Line Co.	Rally Pipeline Corp.	06-01-92	G-S	59,736	N	I	05-14-92	09-11-92
ST92-4220	United Gas Pipe Line Co.	Phibro Energy USA Inc.	06-01-92	G-S	314,400	N	I	05-21-92	09-18-92
ST92-4221	United Gas Pipe Line Co.	Scana Hydrocarbons, Inc.	06-01-92	G-S	100,000	N	I	05-12-92	09-09-92
ST92-4222	Mississippi River Trans. Corp.	Exxon Co., U.S.A.	06-01-92	G-S	45,000	N	I	05-21-92	Indef.
ST92-4223	Texas Gas Transmission Corp.	Polaris Pipeline Corp.	06-01-92	G-S	445,000	Y	I	05-16-92	Indef.
ST92-4224	Texas Gas Transmission Corp.	Access Energy Corp.	06-01-92	G-S	100,000	N	I	05-20-92	Indef.
ST92-4225	Texas Gas Transmission Corp.	Access Energy Corp.	06-01-92	G-S	100,000	N	I	05-21-92	Indef.
ST92-4226	Gas Co. of New Mexico	El Paso Natural Gas Co.	06-02-92	G-HT	10,000	N	I	05-01-92	04-30-93
ST92-4227	Tennessee Gas Pipeline Co.	Equitrans Inc.	06-02-92	G	5,000	N	F	05-23-92	Indef.
ST92-4228	Tennessee Gas Pipeline Co.	North Canadian Marketing Corp.	06-02-92	G-S	150,000	N	I	05-24-92	Indef.
ST92-4229	Tennessee Gas Pipeline Co.	Equitable Resources Marketing Co.	06-02-92	G-S	307,000	N	I	05-03-92	Indef.
ST92-4230	ONG Transmission Co.	Phillips Gas Pipeline Co.	06-02-92	C	20,000	N	I	005-06-92	Indef.
ST92-4231	Texas Eastern Transmission Corp.	Energy Consultants, Inc.	06-03-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-4232	Texas Eastern Transmission Corp.	Tenngasco Marketing Corp.	06-03-92	G-S	400,000	N	I	04-01-92	Indef.
ST92-4233	Texas Eastern Transmission Corp.	Channel Industries Gas Co.	06-03-92	B	15,000	N	I	04-01-92	Indef.



Docket number <sup>1</sup>	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity <sup>1</sup>	Aff. Y/A/N <sup>2</sup>	Rate sch.	Date commenced	Projected termination date
ST92-4234	Texas Eastern Transmission Corp.	Phillips Gas Marketing Co.	06-03-92	G-S	90,000	N	I	05-21-92	Indef.
ST92-4235	Exxon Gas System, Inc.	Sabine Pipeline Co.	06-03-92	C	3,000	N	I	04-18-92	Indef.
ST92-4236	Exxon Gas System, Inc.	Neches Gas Distribution Co.	06-03-92	C	5,000	N	I	05-01-92	Indef.
ST92-4237	Tennessee Gas Pipeline Co.	Pontchartrain Natural Gas System.	06-03-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4238	Kern River Gas Transmission Co.	Shell Western E&P Inc.	06-03-92	G-S	100,000	N	I	05-06-92	Indef.
ST92-4239	Tennessee Gas Pipeline Co.	Pontchartrain Natural Gas System.	06-03-92	G-S	80,000	N	I	06-01-92	Indef.
ST92-4240	CNG Transmission Corp.	West Ohio Gas Co.	06-03-92	B	20,000	N	I	05-06-92	Indef.
ST92-4241	CNG Transmission Corp.	Stand Energy Corp.	06-03-92	G-S	120	N	I	05-16-92	Indef.
ST92-4242	AWR Pipeline Co.	Clinton Gas Marketing, Inc.	06-03-92	G-S	10,000	N	I	05-12-92	Indef.
ST92-4243	AWR Pipeline Co.	American Exploration Gas Systems.	06-03-92	G-S	300	N	I	05-08-92	Indef.
ST92-4244	AWR Pipeline Co.	Howard Energy Co., Inc.	06-03-92	G-S	100,000	N	I	05-11-92	Indef.
ST92-4245	AWR Pipeline Co.	Access Energy Corp.	06-03-92	G-S	50,000	N	I	05-09-92	Indef.
ST92-4246	AWR Pipeline Co.	Northern Indiana Public Service Co.	06-03-92	G-S	100,000	N	I	05-05-92	Indef.
ST92-4247	Gulf Coast Natural Gas Co.	Phillips Gas Marketing Co.	06-04-92	C	50,000	N	I	05-23-92	Indef.
ST92-4248	Gulf Coast Natural Gas Co.	GC Marketing Co.	06-04-92	C	50,000	N	I	05-08-92	Indef.
ST92-4249	Five Flags Pipe Line Co.	Florida Gas Transmission Co.	06-04-92	C	1,000	N	I	12-01-91	12-30-91
ST92-4250	Five Flags Pipe Line Co.	Florida Gas Transmission Co.	06-04-92	C	1,500	N	I	03-01-91	03-21-91
ST92-4251	Ong Transmission Co.	Panhandle Eastern Pipeline Co.	06-04-92	C	20,000	N	I	05-06-92	Indef.
ST92-4252	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	06-04-92	G-S	262,625	A	I	05-15-92	08-31-93
ST92-4253	K N Energy, Inc.	Union Pacific Fuels, Inc.	06-04-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4254	Columbia Gas Transmission Corp.	Krupp & Associates	06-05-92	G-S	194	Y	F	06-01-92	Indef.
ST92-4255	National Fuel Gas Supply Corp.	Three Rivers Pipeline Co.	06-05-92	G-S	10,000	N	I	05-05-92	09-02-92
ST92-4256	Tarpon Transmission Co.	Entrade Corp.	06-05-92	G-S	50,000	N	I	04-01-92	G-S
ST92-4257	Tarpon Transmission Co.	Coast Energy Group, Inc.	06-05-92	G-S	30,000	N	I	05-01-92	Indef.
ST92-4258	Stingray Pipeline Co.	Energy Marketing Exchange.	06-05-92	K-S	30,000	N	I	05-01-92	Indef.
ST92-4259	Lone Star Gas Co.	Natural Gas P/L Co. of America.	06-08-92	C	50,000	N	I	05-01-92	Indef.
ST92-4260	Lone Star Gas Co.	Tennessee Gas Pipeline Co.	06-08-92	C	50,000	N	I	05-01-92	Indef.
ST92-4261	East Tennessee Natural Gas Co.	Citizens Gas Supply Corp.	06-08-92	G-S	512,500	N	I	05-08-92	Indef.
ST92-4262	East Tennessee Natural Gas Co.	Transok Gas Co.	06-08-92	G-S	25,000	N	I	05-18-92	Indef.
ST92-4263	East Tennessee Natural Gas Co.	Florida Steel Corp.	06-08-92	G-S	5,000	N	I	05-12-92	Indef.
ST92-4264	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co.	06-08-92	G-S	100,000	N	I	05-13-92	Indef.
ST92-4265	Natural Gas P/L Co. of America.	Eastex Gas Storage & Exchange, Inc.	06-08-92	G-S	500,000	N	I	05-11-92	Indef.
ST92-4266	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	06-08-92	G-S	150,000	N	I	05-14-92	Indef.
ST92-4267	Kern River Gas Transmission Co.	Southwest Gas Corp.	06-08-92	G-S	250,000	N	I	05-07-92	Indef.
ST92-4268	Louisiana Resources Pipeline Co.	Texas Gas Transmission Corp.	06-08-92	C	20,000	N	I	06-01-92	Indef.
ST92-4269	Louisiana Resources Pipeline Co.	Sea Robin Pipeline Co.	06-08-92	C	50,000	N	I	06-01-92	Indef.
ST92-4270	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	06-08-92	G-S	10,000	N	I	05-06-92	Indef.
ST92-4271	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	06-08-92	G-S	19,736	N	I	05-06-92	Indef.
ST92-4272	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	06-08-92	G-S	34,825	N	I	05-06-92	Indef.
ST92-4273	Gulf Energy Pipeline Co.	Tennessee Gas Pipeline Co.	06-09-92	C	5,000	N	I	02-02-92	02-01-94
ST92-4274	Gulf Energy Pipeline Co.	Natural Gas P/L Co. of America.	06-09-92	C	30,000	N	I	06-01-92	Indef.
ST92-4275	United Gas Pipe Line Co.	Shell Gas Trading Co.	06-09-92	G-S	209,600	N	I	05-29-92	09-26-92
ST92-4276	United Gas Pipe Line Co.	Sigco Marketing, Inc.	06-09-92	G-S	4,978	N	I	05-27-92	09-24-92
ST92-4277	Gateway Pipeline Co.	Shell Gas Trading Co.	06-09-92	G-S	200,000	N	I	06-01-92	09-29-92
ST92-4278	Panhandle Eastern Pipe Line Co.	Columbia Gas of Kentucky.	06-09-92	G-S	10,000	N	I	05-13-92	Indef.
ST92-4279	Stingray Pipeline Co.	Exxon Corp.	06-10-92	K-S	20,000	N	I	06-01-92	Indef.



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ST92-4280	Channel Industries	Anr Pipeline Co	06-10-92	C	70,000	N	I	06-01-92	Indef.
ST92-4281	Tennessee Gas Pipeline Co.	Aluminum Co. of America	06-10-92	G-S	2,625	N	I	06-01-92	Indef.
ST92-4282	Kern River Gas Transmission Co.	National Energy Systems Co.	06-10-92	G-S	100,000	Y	I	05-13-92	Indef.
ST92-4283	Kern River Gas Transmission Co.	Southern California Gas Co.	06-10-92	G-S	200,000	N	I	05-16-92	Indef.
ST92-4284	Kern River Gas Transmission Co.	Sunrise Energy Co.	06-10-92	G-S	100,000	N	I	05-13-92	Indef.
ST92-4285	Mississippi River Trans. Corp.	Associated Natural Gas, Inc.	06-10-92	G-S	15,000	A	I	06-01-92	Indef.
ST92-4286	Arkla Energy Resources	Kerr McGee Corp.	06-10-92	G-S	100,000	N	I	03-01-92	Indef.
ST92-4287	Arkla Energy Resources	Premier Gas Co.	06-10-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-4288	Arkla Energy Resources	Gas Energy Development	06-10-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-4289	Arkla Energy Resources	Exxon Corp.	06-10-92	G-S	75,000	N	I	04-01-92	Indef.
ST92-4290	Arkla Energy Resources	Nimron Natural Gas Corp.	06-10-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-4291	Arkla Energy Resources	Pacific Enterprises Oil Co.	06-10-92	G-S	25,000	N	I	03-01-92	Indef.
ST92-4292	Columbia Gas Transmission Corp.	Endevco Oil & Gas Co.	06-10-92	G-S	680	Y	F	06-01-92	10-31-93
ST92-4293	Enogex Inc.	Arkla Energy Resources	06-10-92	C	50,000	N	I	05-01-92	Indef.
ST92-4294	Enogex Inc.	Panhandle Eastern Pipeline Co.	06-10-92	C	10,000	N	I	05-05-92	Indef.
ST92-4295	Colorado Interstate Gas Co.	Mountain Gas Resources, Inc.	06-10-92	G-S	50,000	N	I	04-10-92	Indef.
ST92-4296	Northern Natural Gas Co.	El Paso Natural Gas Co.	06-10-92	G-S	400,000	N	F/I	04-24-92	Indef.
ST92-4297	Northern Natural Gas Co.	Howard Energy Co., Inc.	06-10-92	G-S	100,000	N	F/I	05-02-92	Indef.
ST92-4298	Northern Natural Gas Co.	NGC Transportation, Inc.	06-10-92	G-S	200,000	N	F/I	05-01-92	Indef.
ST92-4299	Northern Natural Gas Co.	Michael Gas Marketing Co.	06-10-92	G-S	20,000	N	F/I	05-20-92	Indef.
ST92-4300	Northern Natural Gas Co.	Lone Star Gas Co.	06-10-92	B	25,000	N	F/I	05-01-92	Indef.
ST92-4301	Northern Natural Gas Co.	Progas U.S.A., Inc.	06-10-92	G-S	75,000	N	F/I	05-09-92	Indef.
ST92-4302	Northern Natural Gas Co.	Mobil Natural Gas Inc.	06-10-92	G-S	100,000	N	F/I	05-15-92	Indef.
ST92-4303	Florida Gas Transmission Co.	Shell Gas Trading Co.	06-11-92	G-S	30,000	N	F	05-15-92	05-14-93
ST92-4304	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	06-11-92	G-S	10,000	N	F	05-01-92	10-31-92
ST92-4305	Colorado Interstate Gas Co.	Bridgigas U.S.A., Inc.	06-11-92	G-S	50,000	N	I	05-04-92	Indef.
ST92-4306	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.	06-11-92	G-S	188,565	A	I	05-13-92	09-30-92
ST92-4307	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.	06-11-92	G-S	170,100	A	I	05-13-92	05-01-93
ST92-4308	Transok, Inc.	Northern Natural Gas Co.	06-11-92	C	50,000	N	I	05-07-92	Indef.
ST92-4309	Transok, Inc.	Black Marlin Pipeline Co.	06-11-92	C	150,000	N	I	03-01-92	Indef.
ST92-4310	Transok, Inc.	Northern Natural Gas Co.	06-11-92	C	50,000	N	I	05-01-92	Indef.
ST92-4311	Transok, Inc.	Arkla Energy Resources	06-11-92	C	500	N	I	05-14-92	Indef.
ST92-4312	Transok, Inc.	Arkla Energy Resources	06-11-92	C	25,000	N	I	03-01-92	Indef.
ST92-4313	Tennessee Gas Pipeline Co.	Texas Power Corp.	06-11-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4314	Tennessee Gas Pipeline Co.	Gasmark, Inc.	06-11-92	G-S	30,000	N	I	06-01-92	Indef.
ST92-4315	Tennessee Gas Pipeline Co.	Entrade Corp.	06-11-92	G-S	1,310,000	N	I	05-16-92	Indef.
ST92-4316	Tennessee Gas Pipeline Co.	Cornerstone Production Corp.	06-11-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4317	Tennessee Gas Pipeline Co.	Valley Gas Co.	06-11-92	B	60,000	N	I	06-10-92	Indef.
ST92-4318	Tennessee Gas Pipeline Co.	Vigas Corp.	06-11-92	G-S	110,000	N	I	05-31-92	Indef.
ST92-4319	South Georgia Natural Gas Co.	City of Colquitt	06-11-92	G-S	200	N	I	05-12-92	02-28-97
ST92-4320	Southern Natural Gas Co.	City of Tifton	06-11-92	G-S	664	N	I	04-01-92	03-01-97
ST92-4321	Southern Natural Gas Co.	City of Tallahassee	06-11-92	G-S	5,592	N	I	04-01-92	09-30-96
ST92-4322	Kern River Gas Transmission Co.	Westford Development, Inc.	06-11-92	G-S	15,000	N	I	05-13-92	Indef.
ST92-4323	Kern River Transmission Co.	National Gas Resources L.P.	06-11-92	G-S	50,000	N	I	05-16-92	Indef.
ST92-4324	Kern River Gas Transmission Co.	POCO Petroleum Ltd.	06-11-92	G-S	100,000	N	I	05-15-92	Indef.
ST92-4325	Northern Natural Gas Co.	Louis Dreyfus Energy Corp.	06-12-92	G-S	100,000	N	I	06-02-92	Indef.
ST92-4326	Northern Natural Gas Co.	Mountain Front Pipeline Co., Inc.	06-12-92	G-S	25,000	N	I	05-20-92	Indef.
ST92-4327	Northern Natural Gas Co.	MG Natural Gas Corp.	06-12-92	G-S	100,000	N	F/I	06-01-92	Indef.
ST92-4328	Northern Natural Gas Co.	Enron Oil & Gas Co.	06-12-92	G-S	50,000	N	F/I	05-27-92	Indef.
ST92-4329	Questar Pipeline Co.	Williams Gas Marketing	06-12-92	G-S	84,000	N	I	05-14-92	Indef.
ST92-4330	Questar Pipeline Co.	Questar Energy Co.	06-12-92	G-S	350,000	Y	I	05-26-92	Indef.
ST92-4331	Tennessee Gas Pipeline Co.	CNG Trading Co.	06-12-92	G-S	650,000	N	I	05-20-92	Indef.
ST92-4332	Midwestern Gas Transmission Co.	Gasmark, Ltd.	06-12-92	G-S	25,000	N	I	06-01-92	Indef.



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ST92-4333	Northwest Pipeline Corp.	PWG Partnership.....	06-12-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4334	Texas Eastern Transmission Corp.	CMS Gas Marketing Co.....	06-12-92	G-S	500	N	I	05-29-92	Indef.
ST92-4335	Colorado Interstate Gas Co.	Continental Energy Co.....	06-12-92	G-S	380	N	I	05-12-92	Indef.
ST92-4336	Colorado Interstate Gas Co.	Texaco Gas Marketing Inc.	06-12-92	G-S	10,000	N	I	05-01-92	Indef.
ST92-4337	Colorado Interstate Gas Co.	Enron Gas Marketing, Inc.	06-12-92	G-S	75,000	N	I	05-01-92	Indef.
ST92-4338	Consumers Power Co.....	Shell Western E&P.....	06-15-92	G-HI	20,000	N	I	05-15-92	Indef.
ST92-4339	Michigan Gas Storage Co.	Shell Western E&P.....	06-15-92	B	20,000	N	I	05-15-92	Indef.
ST92-4340	Florida Gas Transmission Co.	Rinker Materials Corp.....	06-15-92	G-S	2,590	N	I	05-15-92	Indef.
ST92-4341	Florida Gas Transmission Co.	Southern Natural Gas Co.	06-15-92	G-S	50,000	N	I	05-14-92	Indef.
ST92-4342	Louisiana Resources Pipeline Co.	Louisiana Gas Pipeline Co.	06-15-92	C	410,000	N	I	05-21-92	Indef.
ST92-4343	Transcontinental Gas P/L Corp.	Acadiana Natural Gas Co.	06-15-92	B	125,000	N	I	07-16-91	Indef.
ST92-4344	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc.	06-15-92	B	17,000	N	I	06-22-90	Indef.
ST92-4345	Transcontinental Gas P/L Corp.	MG Natural Gas Corp.	06-15-92	B	15,000	N	I	10-26-88	Indef.
ST92-4346	Transcontinental Gas P/L Corp.	Access Energy Corp.	06-15-92	B	180,000	N	I	02-12-90	Indef.
ST92-4347	Tennessee Gas Pipeline Co.	Quivira Gas Co.	06-15-92	G-S	240,000	N	I	06-01-92	Indef.
ST92-4348	Tennessee Gas Pipeline Co.	Oryx Gas Marketing L.P.	06-15-92	G-S	31,500	N	I	06-04-92	Indef.
ST92-4349	Tennessee Gas Pipeline Co.	Texas Gas Transmission Corp.	06-15-92	G-S	50,000	N	I	06-03-92	Indef.
ST92-4350	Tennessee Gas Pipeline Co.	Louisiana Land and Exploration Co.	06-15-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4351	Tennessee Gas Pipeline Co.	Enermax.....	06-15-92	G-S	29,000	N	I	06-01-92	Indef.
ST92-4352	Tennessee Gas Pipeline Co.	Superior Natural Gas Corp.	06-15-92	G-S	50,000	N	I	06-04-92	Indef.
ST92-4353	Tennessee Gas Pipeline Co.	Catex Energy, Inc.	06-15-92	G-S	102,600	N	I	06-02-92	Indef.
ST92-4354	Colorado Interstate Gas Co.	North Canadian Marketing Corp.	06-16-92	G-S	50,000	N	I	05-12-92	Indef.
ST92-4355	Michigan Gas Storage Co.	Citizens Gas & Coke Utility.	06-16-92	B	35,000	N	I	05-06-92	Indef.
ST92-4356	Northern Natural Gas Co.	Interstate Power Co.	06-16-92	B	1,000	N	I	06-01-92	05-31-93
ST92-4357	Northern Natural Gas Co.	Michigan Gas Co.	06-16-92	B	7,000	N	I	06-01-92	05-31-93
ST92-4358	Northern Natural Gas Co.	Northern States Power Co.	06-16-92	B	55,000	N	F	06-01-92	05-31-93
ST92-4359	Northern Natural Gas Co.	Wisconsin Gas Co.	06-16-92	B	4,421	N	F	06-01-92	05-31-93
ST92-4360	Michigan Gas Storage Co.	Consumers Power Co.	06-16-92	B	50,000	Y	I	06-10-92	Indef.
ST92-4361	Consumers Power Co.	CMS Gas Marketing Co.	06-16-92	G-HT	50,000	N	I	06-10-91	Indef.
ST92-4362	Sabine Pipe Line Co.	Premier Gas Co.	06-16-92	G-S	50,000	N	I	05-01-91	Indef.
ST92-4363	Sabine Pipe Line Co.	Olympic Fuels Co.	06-16-92	G-S	50,000	N	I	05-01-91	Indef.
ST92-4364	Sabine Pipe Line Co.	Olympic Fuels Co.	06-16-92	G-S	50,000	N	I	04-21-91	Indef.
ST92-4365	United Gas Pipe Line Co.	Texaco Gas Marketing Inc.	06-16-92	G-S	52,400	N	I	06-01-92	09-29-92
ST92-4366	United Gas Pipe Line Co.	Texaco Gas Marketing Inc.	06-16-92	G-S	41,920	N	I	06-01-92	09-29-92
ST92-4367	United Gas Pipe Line Co.	Entex.....	06-16-92	G-S	20,000	N	I	06-01-92	09-29-92
ST92-4368	United Gas Pipe Line Co.	Arco Oil and Gas Co.	06-16-92	G-S	15,720	N	I	05-27-92	09-24-92
ST92-4369	United Gas Pipe Line Co.	Equitable Resources Marketing Co.	06-16-92	G-S	262,000	N	I	05-22-92	09-19-92
ST92-4370	United Gas Pipe Line Co.	Enermax, Div. Of Nukem, Inc.	06-16-92	G-S	104,800	N	I	05-27-92	09-24-92
ST92-4371	United Gas Pipe Line Co.	Arkla Energy Marketing Co.	06-16-92	G-S	209,600	N	I	06-01-92	09-29-92
ST92-4372	United Gas Pipe Line Co.	Coastal Gas Marketing Co.	06-16-92	G-S	262,000	N	I	05-27-92	09-24-92
ST92-4373	United Gas Pipe Line Co.	Access Energy Corp.	06-16-92	G-S	41,920	N	I	05-22-92	09-19-92
ST92-4374	United Gas Pipe Line Co.	Amoco Energy Trading Co.	06-16-92	G-S	60,000	N	I	06-01-92	09-29-92
ST92-4375	United Gas Pipe Line Co.	Ames Financial, Inc.	06-16-92	G-S	50,000	N	I	06-01-92	09-29-92
ST92-4376	United Gas Pipe Line Co.	NGC Transportation, Inc.	06-16-92	G-S	157,200	N	I	06-01-92	09-29-92
ST92-4377	United Gas Pipe Line Co.	Tejas Hydrocarbons Co.	06-16-92	G-S	157,200	N	I	06-03-92	10-01-92
ST92-4378	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	06-17-92	G-S	10,527	A	I	05-28-92	Indef.
ST92-4379	El Paso Natural Gas Co.	Kerr-McGhee Corp.	06-17-92	G-S	10,300	A	I	06-03-92	Indef.
ST92-4380	Tennessee Gas Pipeline Co.	Energy Consultants, Inc.	06-17-92	G-S	2,000	N	I	04-10-92	Indef.
ST92-4381	Kern River Gas Transmission Co.	Wes Cana Energy Marketing (U.S.).	06-17-92	G-S	50,000	N	I	05-23-92	Indef.



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ST92-4382	East Texas Gas Systems...	Texas Gas Transmission Co.	06-17-92	C	100,000	N	I	11-01-92	Indef.
ST92-4383	Florida Gas Transmission Co.	Florida Public Utilities Co...	06-17-92	G-S	8,164	N	F	06-01-92	Indef.
ST92-4384	Florida Gas Transmission Co.	City of Gainesville .....	06-17-92	G-S	8,800	N	F	06-01-92	Indef.
ST92-4385	Northern Natural Gas Co.	Iowa Electric Light and Power Co.	06-17-92	B	20,000	N	F	06-01-92	Indef.
ST92-4386	Northern Natural Gas Co.	Owatonna Public Utilities .....	06-17-92	B	1,669	N	F	06-01-92	05-31-93
ST92-4387	Northern Natural Gas Co.	Metropolitan Utilities District.	06-17-92	B	10,000	N	F	06-01-92	05-31-93
ST92-4388	Texas Eastern Transmission Corp.	Ward Gas Marketing, Inc...	06-17-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4389	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	06-17-92	G-S	225,000	N	I	06-06-92	Indef.
ST92-4390	Texas Eastern Transmission Corp.	Tennasco Marketing Corp.	06-17-92	G-S	400,000	N	I	06-01-92	Indef.
ST92-4391	Texas Eastern Transmission Corp.	Arkla Energy Marketing Co.	06-17-92	G-S	700,000	N	I	06-01-92	Indef.
ST92-4392	Texas Eastern Transmission Corp.	Howell Gas Management Co.	06-17-92	G-S	150,000	N	I	05-30-92	Indef.
ST92-4393	Natural Gas P/L Co. of America.	Northern Indiana Pub. Service Co.	06-17-92	B	18,000	N	I	07-01-92	Indef.
ST92-4394	Columbia Gas Transmission Corp.	Bradco Oil Co.....	06-17-92	G-S	358	N	I	06-10-92	Indef.
ST92-4395	Lone Star Gas Co.....	Phillips Texas Border Pipeline.	06-18-92	C	10,000	N	I	05-13-92	Indef.
ST92-4396	ONG Transmission Co .....	ANR Pipeline Co .....	06-18-92	C	30,000	N	I	05-22-92	Indef.
ST92-4397	Tennessee Gas Pipeline Co.	Amoco Energy Trading Corp.	06-18-92	G-S	200,000	N	I	06-01-92	Indef.
ST92-4398	United Gas Pipe Line Co.	Chevron U.S.A., Inc .....	06-18-92	G-S	104,800	N	I	06-08-92	10-06-92
ST92-4399	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	06-18-92	G-S	250,000	N	I	06-01-92	Indef.
ST92-4400	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co .....	06-18-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4401	Panhandle Eastern Pipe Line Co.	Amoco Energy Trading Corp.	06-18-92	G-S	100,000	N	I	05-28-92	Indef.
ST92-4402	Panhandle Eastern Pipe Line Co.	Amgas, Inc.....	06-18-92	G-S	50	N	I	06-07-92	Indef.
ST92-4403	Transcontinental Gas P/L Corp.	Bridgeline Gas Distribution Co.	06-18-92	G-S	150,000	N	I	05-22-92	Indef.
ST92-4404	Stingray Pipeline Co .....	Tejas Power Corp .....	06-18-92	K-S	100,000	N	I	10-01-90	Indef.
ST92-4405	Texas Gas Transmission Corp.	CMS Gas Marketing .....	06-18-92	G-S	100,000	Y	I	06-01-92	Indef.
ST92-4406	Texas Gas Transmission Corp.	Total Minatome Corp.....	06-18-92	G-S	75,000	Y	I	06-02-92	Indef.
ST92-4407	Westar Transmission Co....	El Paso Natural Gas Co....	06-19-92	C	20,000	N	I	05-20-92	Indef.
ST92-4408	El Paso Natural Gas .....	Midcon Marketing Corp.....	06-19-92	G-S	200,000	A	I	06-06-92	Indef.
ST92-4409	El Paso Natural Gas .....	Grand Valley Gas Co.....	06-19-92	G-S	128,750	A	I	06-02-92	Indef.
ST92-4410	El Paso Natural Gas .....	Jal Gas Co., Inc .....	06-19-92	G-S	3,937	A	F	06-03-92	Indef.
ST92-4411	El Paso Natural Gas .....	Hudson Gas Systems, Inc.	06-19-92	G-S	30,900	A	I	06-06-92	Indef.
ST92-4412	Exxon Gas System, Inc.....	Neches Gas Distribution Co.	06-19-92	C	10,000	N	I	06-01-92	Indef.
ST92-4413	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-02-92	Indef.
ST92-4414	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-03-92	Indef.
ST92-4415	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	05-26-92	Indef.
ST92-4416	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-30-92	Indef.
ST92-4417	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-14-92	Indef.
ST92-4418	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-01-92	Indef.
ST92-4419	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	06-09-92	Indef.
ST92-4420	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	05-26-92	Indef.
ST92-4421	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-01-92	Indef.
ST92-4422	Algonquin Gas Transmission Co.	Distigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-02-92	Indef.
ST92-4423	Questar Pipeline Co.....	Amoco Production Co .....	06-19-92	G-S	16,000	N	I	06-01-92	Indef.
ST92-4424	Questar Pipeline Co.....	Northwest Pipeline Co.....	06-19-92	G	100,000	N	I	06-10-92	Indef.
ST92-4425	Webb/Duval Gatherers .....	Texas Eastern Transmission Co.	06-19-92	C	50,000	N	I	06-19-92	Indef.
ST92-4426	Pelican Interstate Gas System.	Anadarko Trading Co .....	06-19-92	K-S	50,000	N	I	06-01-92	Indef.



Docket number <sup>1</sup>	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity <sup>1</sup>	Aff. Y/ A/N <sup>3</sup>	Rate sch.	Date commenced	Projected termination date
ST92-4427	Northern Natural Gas Co.	Equitable Resources Marketing Co.	06-19-92	G-S	100,000	N	I	05-28-92	Indef.
ST92-4428	Northern Natural Gas Co.	Peoples Natural Gas Co.	06-19-92	B	111,600	N	F	06-01-92	05-31-93
ST92-4429	Transwestern Pipeline Co.	Richardson Products Co.	06-19-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4430	Transwestern Pipeline Co.	Pacific Gas and Electric Co.	06-19-92	B	100,000	N	I	05-24-92	Indef.
ST92-4431	Delhi Gas Pipeline Corp.	Arkla Energy Resources	06-22-92	C	4,000	N	I	06-01-92	Indef.
ST92-4432	Texas Gas Transmission Corp.	Highland Energy Co.	06-19-92	G-S	10,000	N	I	06-12-92	Indef.
ST92-4433	Texas Gas Transmission Corp.	Centran Corp.	06-19-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4434	Texas Gas Transmission Corp.	Endevco Oil and Gas Co.	06-19-92	G-S	30,000	N	I	06-13-92	35Indef.
ST92-4435	Texas Gas Transmission Corp.	Equitable Resources Marketing Co.	06-19-92	G-S	20,000	Y	I	06-01-92	Indef.
ST92-4436	Southern Natural Gas Co.	Petro Source Gas Ventures.	06-19-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4437	Southern Natural Gas Co.	Energy Development Corp.	06-19-92	G-S	200,000	N	I	05-21-92	Indef.
ST92-4438	Sea Robin Pipeline Co.	Cockrell Resources, Inc.	06-19-92	G-S	3,000	N	I	06-01-92	Indef.
ST92-4439	South Georgia Natural Gas Co.	City of Cuthbert	06-19-92	G-S	500	N	I	06-04-92	10-04-97
ST92-4440	South Georgia Natural Gas Co.	City of Tallahassee	06-19-92	G-S	5,564	N	I	06-01-92	09-30-96
ST92-4441	Sea Robin Pipeline Co.	Centran Corp.	06-19-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4442	South Georgia Natural Gas Co.	Merck & Co., Inc.	06-19-92	G-S	2,500	N	I	05-29-92	Indef.
ST92-4443	Southern Natural Gas Co.	Albany Water, Gas & Light Comm.	06-19-92	G-S	882	N	I	05-23-92	Indef.
ST92-4444	South Georgia Natural Gas Co.	City of Pelham	06-19-92	G-S	500	N	I	06-04-92	10-04-97
ST92-4445	Southern Natural Gas Co.	Merck & Co., Inc.	06-19-92	G-S	2,500	N	I	05-29-92	Indef.
ST92-4446	Southern Natural Gas Co.	Neste OY	06-19-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4447	Southern Natural Gas Co.	City of Douglas	06-19-92	G-S	518	N	I	06-01-92	03-01-97
ST92-4448	Northern Natural Gas Co.	Western Gas Utilities, Inc.	06-19-92	B	550	N	I	06-01-92	05-31-93
ST92-4449	Gateway Pipeline Co.	Texaco Gas Marketing Inc.	06-22-92	G-S	100,000	N	I	05-14-92	09-14-92
ST92-4450	Gateway Pipeline Co.	Prior Intrastate Corp.	06-22-92	G-S	300,000	N	I	05-27-92	09-24-92
ST92-4451	United Pipe Line Co.	Oryx Gas Marketing Ltd. Part.	06-22-92	G-S	62,880	N	I	06-09-92	10-09-92
ST92-4452	Northwest Pipeline Corp.	Pacific Gas Transmission Co.	06-19-92	G	10,000	N	I	03-27-92	Indef.
ST92-4453	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co.	06-19-92	B	1,050,000	N	I	09-19-87	10-09-90
ST92-4454	Equitrans, Inc.	Marco Energy Corp.	06-19-92	G-S	94,900	N	I	06-02-92	Indef.
ST92-4455	Tennessee Gas Pipeline Co.	Seagull Marketing Services Inc.	06-19-92	G-S	250,000	N	I	06-04-92	Indef.
ST92-4456	Transwestern Pipeline Co.	Signal Fuels Trading Corp.	06-19-92	B	10,000	N	I	06-01-92	Indef.
ST92-4457	Transwestern Pipeline Co.	Pacific Gas and Electric Co.	06-19-92	B	200,000	N	I	06-01-92	Indef.
ST92-4458	Transwestern Pipeline Co.	Southern California Gas Co.	06-19-92	B	100,000	N	I	06-09-92	Indef.
ST92-4459	Transwestern Pipeline Co.	Mitchell Marketing, Inc.	06-19-92	G-S	50,000	N	I	06-03-92	Indef.
ST92-4460	Kern River Gas Transmission Co.	Grand Valley Gas Canada Ltd.	06-19-92	G-S	300,000	N	I	05-30-92	Indef.
ST92-4461	Kern River Gas Transmission Co.	United States Gypsum Co.	06-19-92	G-S	3,000	N	I	05-21-92	Indef.
ST92-4462	Kern River Gas Transmission Co.	Tanaska Marketing Ventures.	06-19-92	G-S	75,000	N	I	05-27-92	Indef.
ST92-4463	Kern River Gas Transmission Co.	Coast Energy Group, Inc.	06-19-92	G-S	43,000	N	I	05-23-92	Indef.
ST92-4464	Kern River Gas Transmission Co.	Grand Valley Gas Services Co.	06-19-92	G-S	300,000	N	I	05-30-92	Indef.
ST92-4465	Kern River Gas Transmission Co.	United States Gypsum Co.	06-19-92	G-S	18,000	N	I	05-21-92	Indef.
ST92-4466	Kern River Gas Transmission Co.	Centennial Natural Gas Corp.	06-19-92	G-S	300,000	N	I	05-30-92	Indef.
ST92-4467	Kern River Gas Transmission Co.	NephiCity Corp.	06-19-92	G-S	2,000	N	I	05-30-92	Indef.
ST92-4468	Kern River Gas Transmission Co.	Equitable Resources Marketing Co.	06-19-92	G-S	100,000	N	I	05-21-92	Indef.
ST92-4469	Kern River Gas Transmission Co.	Willamette Industries, Inc.	06-19-92	G-S	10,000	N	I	05-27-92	Indef.
ST92-4470	Kern River Gas Transmission Co.	Watson Cogeneration Co.	06-19-92	G-S	100,000	N	I	05-23-92	Indef.
ST92-4471	Kern River Gas Transmission Co.	City of Glendale	06-19-92	G-S	20,000	N	I	05-28-92	Indef.
ST92-4472	Trunkline Gas Co.	Gasmark, Ltd.	06-22-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4473	Trunkline Gas Co.	Tejas Power Corp.	06-22-92	G-S	100,000	N	I	06-06-92	Indef.



Docket number <sup>1</sup>	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity <sup>2</sup>	Aff. Y/ A/N <sup>3</sup>	Rate sch.	Date commenced	Projected termination date
ST92-4474	Trunkline Gas Co.....	Entrade Corp.....	06-22-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4475	Trunkline Gas Co.....	Aquila Energy Marketing Corp.	06-22-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4476	Trunkline Gas Co.....	Conoco, Inc.....	06-22-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4477	Trunkline Gas Co.....	Eagle Natural Gas Co.....	06-22-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4478	Trunkline Gas Co.....	O & R Energy, Inc.....	06-22-92	G-S	25,000	N	I	06-01-92	Indef.
ST92-4479	Trunkline Gas Co.....	CMS Gas Marketing Co.....	06-22-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4480	Trunkline Gas Co.....	Citrus Marketing, Inc.....	06-22-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4481	Channel Industries Gas Co.	Transcontinental Gas P/L Corp.	06-22-92	C	75,000	N	I	06-12-92	Indef.
ST92-4482	Channel Industries Gas Co.	Trunkline Gas Co.....	06-22-92	C	75,000	N	I	06-05-92	Indef.
ST92-4483	Transok, Inc.....	Arkla Energy Resources.....	06-22-92	C	50,000	N	I	05-19-92	Indef.
ST92-4484	Transok, Inc.....	Arkla Energy Resources.....	06-22-92	C	50,000	N	I	05-16-92	Indef.
ST92-4485	Transok, Inc.....	Northern Natural Gas Co.....	06-22-92	C	25,000	N	I	05-23-92	Indef.
ST92-4486	Delhi Gas Pipeline Corp.....	Arkla Energy Resources.....	06-22-92	C	20,000	N	I	06-12-92	Indef.
ST92-4487	Delhi Gas Pipeline Corp.....	United Gas Pipe Line Co.....	06-22-92	C	7,000	N	I	06-01-92	04-30-96
ST92-4488	East Texas Gas Systems.....	United Gas Pipe Line Co.....	06-22-92	C	30,000	N	I	05-19-92	Indef.
ST92-4489	East Texas Gas Systems.....	Tennessee Gas Pipeline Co.	06-22-92	C	20,000	N	I	05-21-92	Indef.
ST92-4490	Valero Transmission, L.P.....	Arkla Energy Resources.....	06-22-92	C	5,000	N	I	06-01-92	Indef.
ST92-4491	Valero Transmission, L.P.....	Transcontinental Gas P/L Corp.	06-22-92	C	1,500	N	I	06-01-92	Indef.
ST92-4492	Valero Transmission, L.P.....	Texas Gas Transmission Co.	06-22-92	C	12,500	N	I	06-01-92	Indef.
ST92-4493	Columbia Gulf Transmission Co.	NGC Transportation, Inc.....	06-22-92	G-S	200,000	N	I	06-01-92	Indef.
ST92-4494	Columbia Gulf Transmission Co.	Stellar Gas Co.....	06-22-92	G-S	50,000	N	I	06-05-92	Indef.
ST92-4495	Columbia Gulf Transmission Co.	Tejas Power Corp.....	06-22-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4496	Columbia Gulf Transmission Co.	Texaco Gas Marketing, Inc.	06-22-92	G-S	100,000	N	I	06-02-92	Indef.
ST92-4497	Columbia Gulf Transmission Co.	Texas Gas Transmission Corp.	06-22-92	G-S	100,000	N	I	06-03-92	Indef.
ST92-4498	Columbia Gulf Transmission Co.	Williams Gas Marketing Co.	06-22-92	G-S	15,000	N	I	06-01-92	Indef.
ST92-4499	Columbia Gulf Transmission Co.	Yuma Gas Corp.....	06-22-92	G-S	70,000	N	I	06-01-92	Indef.
ST92-4500	Arkla Energy Resources.....	Arkla Energy Marketing Co.	06-23-92	G-S	3,000	A	F	05-01-92	Indef.
ST92-4501	United Gas Pipe Line Co.....	Southern Natural Gas Co.....	06-23-92	G-S	3,000	N	F	06-01-92	09-29-92
ST92-4502	Kern River Gas Transmission Co.	Southwest Gas Corp.....	06-23-92	G-S	14,000	N	F	06-01-92	Indef.
ST92-4503	Questar Pipeline Co.....	Aquila Energy Marketing Corp.	06-23-92	G-S	200,000	N	I	06-01-92	01-31-93
ST92-4504	Questar Pipeline Co.....	CNG Producing Co.....	06-23-92	G-S	10,000	N	I	06-01-92	05-31-07
ST92-4505	CNG Transmission Corp.....	Equitable Resources Marketing.	06-23-92	G-S	25,000	N	I	05-28-92	Indef.
ST92-4506	CNG Transmission Corp.....	Potomac Electric & Power Co.	06-23-92	G-S	300,000	N	I	05-07-92	Indef.
ST92-4507	Questar Pipeline Co.....	Mountain Fuel Supply Co.....	06-23-92	B	7,500	N	I	06-01-92	09-15-92
ST92-4508	Tennessee Gas Pipeline Co.	Natural Gas Clearinghouse, Inc.	06-24-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4509	Questar Pipeline Co.....	Colorado Interstate Gas Co.	06-24-92	G	9,000	N	I	06-15-92	Indef.
ST92-4510	ONG Transmission Co.....	Ozark Gas Pipeline Co.....	06-24-92	C	30,000	N	I	06-01-92	Indef.
ST92-4511	ONG Transmission Co.....	Arkla Energy Resources.....	06-24-92	C	30,000	N	I	06-01-92	Indef.
ST92-4512	ONG Transmission Co.....	Phillips Gas Pipeline Co.....	06-24-92	C	20,000	N	I	06-01-92	Indef.
ST92-4513	ONG Transmission Co.....	Panhandle Eastern Pipe Line Co.	06-24-92	C	50,000	N	I	06-01-92	Indef.
ST92-4514	Natural Gas P/L Co. of America.	NGC Transportation, Inc.....	06-24-92	G-S	500,000	N	I	04-11-92	Indef.
ST92-4515	Natural Gas P/L Co. of America.	CNG Trading Co.....	06-24-92	G-S	20,000	N	I	05-23-92	Indef.
ST92-4516	Natural Gas P/L Co. of America.	Neste Oy.....	06-24-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4517	Natural Gas P/L Co. of America.	Phillips 66 Natural Gas Co.	06-24-92	G-S	5,000	N	I	06-01-92	Indef.
ST92-4518	Natural Gas P/L Co. of America.	Bridgegas U.S.A., Inc.....	06-24-92	G-S	200,000	N	I	05-16-92	Indef.
ST92-4519	Natural Gas P/L Co. of America.	Torch Energy Marketing, Inc.	06-24-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-4520	Natural Gas P/L Co. of America.	Yuma Gas Corp.....	06-24-92	G-S	5,000	N	I	06-01-92	Indef.
ST92-4521	Trailblazer Pipeline Co.....	Williams Gas Marketing Co.	06-24-92	G-S	50,000	N	I	04-06-92	Indef.
ST92-4522	Columbia Gas Transmission Corp.	Atlas Gas Marketing, Inc.....	06-24-92	G-S	550	N	I	06-01-92	Indef.
ST92-4526	Valero Transmission, L.P.....	Northern Natural Gas Co.....	06-25-92	C	30,000	N	I	05-28-92	Indef.



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ST92-4527	United Gas Pipe Line Co.	Amoco Energy Trading Corp.	06-25-92	G-S	60,000	N	I	06-16-92	10-14-92
ST92-4528	Gateway Pipeline Co.	Amoco Energy Trading Corp.	06-25-92	G-S	60,000	N	I	05-29-92	09-26-92
ST92-4529	Kern River Gas Transmission Co.	Entrade Corp.	06-25-92	G-S	500,000	N	I	06-01-92	Indef.
ST92-4530	Kern River Gas Transmission Co.	Access Energy Corp.	06-25-92	G-S	150,000	N	I	06-06-92	Indef.
ST92-4531	Kern River Gas Transmission Co.	Brymore Energy Ltd.	06-25-92	G-S	200,000	N	I	06-05-92	Indef.
ST92-4532	Kern River Gas Transmission Co.	Unigas Corp.	06-25-92	G-S	50,000	N	I	06-05-92	Indef.
ST92-4533	Kern River Gas Transmission Co.	City of Pasadena	06-25-92	G-S	20,000	N	I	06-09-92	Indef.
ST92-4534	United Gas Pipe Line Co.	Midcon Marketing Corp.	06-25-92	G-S	74,198	N	I	06-20-92	10-18-92
ST92-4535	United Gas Pipe Line Co.	Endevco Oil & Gas Co.	06-25-92	G-S	26,200	N	I	06-09-92	10-07-92
ST92-4536	Algonquin Gas Transmission Co.	Yuma Gas Corp.	06-25-92	G-S	71,000	N	I	04-01-92	Indef.
ST92-4537	Algonquin Gas Transmission Co.	O & R Energy, Inc.	06-25-92	G-S	50,000	N	I	03-18-92	Indef.
ST92-4538	Algonquin Gas Transmission Co.	Providence Gas Co.	06-25-92	G-S	40,000	N	I	03-26-92	Indef.
ST92-4539	Algonquin Gas Transmission Co.	Texas-Ohio Gas, Inc.	06-25-92	G-S	120,000	N	I	02-04-92	Indef.
ST92-4540	Algonquin Gas Transmission Co.	Coastal Gas Marketing	06-25-92	G-S	7,900,000	N	I	04-01-92	Indef.
ST92-4541	Algonquin Gas Transmission Co.	Tenngasco Corp.	06-25-92	G-S	960,000	N	I	04-01-92	Indef.
ST92-4542	Algonquin Gas Transmission Co.	Vesta Energy Co.	06-25-92	G-S	130,000	N	I	05-01-92	Indef.
ST92-4543	Algonquin Gas Transmission Co.	Yuma Gas Corp.	06-25-92	G-S	71,000	N	I	04-04-92	Indef.
ST92-5444	Algonquin Gas Transmission Co.	Yuma Gas Corp.	06-25-92	G-S	71,000	N	I	04-01-92	Indef.
ST92-4545	Phillips Gas Pipeline Co.	Phillips Texas Border Pipeline Co.	06-25-92	B	50,000	Y	I	05-01-92	Indef.
ST92-4546	Algonquin Gas Transmission Co.	Yuma Gas Corp.	06-25-92	G-S	71,000	N	I	04-01-92	Indef.
ST92-4547	Algonquin Gas Transmission Co.	Coastal Gas Marketing Co.	06-25-92	G-S	350,000	N	I	04-04-92	Indef.
ST92-4548	Algonquin Gas Transmission Co.	O & R Energy, Inc.	06-25-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-4549	Algonquin Gas Transmission Co.	City of Middleborough	06-25-92	G-S	3,500	N	I	04-22-92	Indef.
ST92-4550	Algonquin Gas Transmission Co.	Access Energy Corp.	06-25-92	G-S	100,000	N	I	04-23-92	Indef.
ST92-4551	Algonquin Gas Transmission Co.	Centran Corp.	06-25-92	G-S	30,000	N	I	04-01-92	Indef.
ST92-4552	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp.	06-25-92	G-S	100,000	N	I	12-01-91	05-01-00
ST92-4553	Columbia Gulf Transmission Co.	Tejas Hydrocarbons Co.	06-25-92	G-S	100,000	N	I	06-11-91	Indef.
ST92-4554	Columbia Gulf Transmission Co.	Superior Natural Gas Corp.	06-25-92	G-S	60,000	N	I	06-11-91	Indef.
ST92-4555	Columbia Gulf Transmission Co.	Mobil Natural Gas, Inc.	06-25-92	G-S	60,000	N	I	06-10-92	Indef.
ST92-4556	Northwest Pipeline Corp.	Intermountain Gas Co.	06-25-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4557	Transok, Inc.	Natural Gas P/L Co. of America.	06-26-92	C	270,000	N	I	05-03-92	Indef.
ST92-4558	Transok, Inc.	Black Marlin Pipeline Co.	06-26-92	C	200,000	N	I	06-02-92	Indef.
ST92-4559	K N Energy, Inc.	Interenergy Corp.	06-26-92	G-S	6,000	N	I	06-01-92	08-31-92
ST92-4560	Lone Star Gas Co.	Northern Natural Gas Co.	06-26-92	C	20,000	N	I	06-01-92	Indef.
ST92-4561	East Tennessee Natural Gas Co.	Enernax, Div. of Nukem, Inc.	06-26-92	G-S	30,000	N	I	05-28-92	Indef.
ST92-4562	East Tennessee Natural Gas Co.	Kaztex Energy Management, Inc.	06-26-92	G-S	25,000	N	I	05-29-92	Indef.
ST92-4563	Natural Gas P/L Co. of America.	Centran Corp.	06-26-92	G-S	75,000	N	I	05-07-92	Indef.
ST92-4564	Natural Gas P/L Co. of America.	El Paso Natural Gas Co.	06-26-92	G	200,000	N	I	05-14-92	Indef.
ST92-4565	Natural Gas P/L Co. of America.	Premier Gas Co.	06-26-92	G-S	10,000	N	F	06-01-92	06-30-92
ST92-4566	Natural Gas P/L Co. of America.	Green Valley Chemical Corp.	06-26-92	G-S	3,800	N	F	06-01-92	05-31-93
ST92-4568	Channel Industries Gas Co.	Public Service Electric & Gas Co.	06-26-92	C	20,000	N	I	06-01-92	Indef.
ST92-4569	Kern River Gas Transmission Co.	Chevron U.S.A., Inc.	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4570	Kern River Gas Transmission Co.	Nevada Cogeneration Associates #2.	06-26-92	G-S	13,000	N	I	03-01-92	Indef.



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ST92-4571	Trunkline Gas Co.	O & R Energy, Inc.	06-26-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-4572	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	06-26-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4573	Panhandle Eastern Pipe Line Co.	NGC Transportation Inc.	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4574	Panhandle Eastern Pipe Line Co.	Amarillo Natural Gas, Inc.	06-26-92	G-S	100	N	I	05-28-92	Indef.
ST92-4575	Panhandle Eastern Pipe Line Co.	Cibola Corp.	06-26-92	G-S	25,000	N	I	06-01-92	Indef.
ST92-4576	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4577	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	06-26-92	G-S	30,000	N	I	06-01-92	Indef.
ST92-4578	ANR Pipeline Co.	Kentucky Pipeline & Storage Co.	06-26-92	B	50,000	N	I	05-29-92	Indef.
ST92-4579	ANR Pipeline Co.	Transco Energy Marketing Co.	06-26-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4580	ANR Pipeline Co.	Dayton Power & Light Co.	06-26-92	B	2,000	N	I	06-01-92	Indef.
ST92-4581	ANR Pipeline Co.	Wisconsin Gas Co.	06-26-92	G-S	339,415	N	I	05-29-92	Indef.
ST92-4582	Northern Natural Gas Co.	Iowa Public Service Co.	06-26-92	B	50,000	N	I	06-01-92	05-31-93
ST92-4583	Northern Natural Gas Co.	Northwestern Public Service Co.	06-26-92	B	5,000	N	F	06-01-92	05-31-93
ST92-4584	Northern Natural Gas Co.	Minnegasco, Inc.	06-26-92	B	34,375	N	F	06-01-92	05-31-93
ST92-4585	Northern Natural Gas Co.	Northern States Power Co.	06-26-92	B	8,000	N	F	06-01-92	05-31-93
ST92-4586	Northern Natural Gas Co.	American Warrior, Inc.	06-26-92	G-S	1,000	N	F/I	05-28-92	Indef.
ST92-4587	Columbia Gas Transmission Corp.	Gaslastic Corp.	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4588	El Paso Natural Gas Co.	NGC Transportation, Inc.	06-26-92	G-S	30,000	A	I	06-11-92	Indef.
ST92-4589	Tejas Gas Corp.	Texas Eastern Transmission Co.	06-26-92	C	2,613	N	I	05-01-92	Indef.
ST92-4590	Texas Gas Transmission Corp.	CNG Producing Co.	06-26-92	G-S	100,000	N	I	06-10-92	Indef.
ST92-4591	Texas Gas Transmission Corp.	Eastex Hydrocarbons, Inc.	06-26-92	G-S	50,000	N	I	06-10-92	Indef.
ST92-4592	Tennessee Gas Pipeline Co.	CNG Trading Co.	06-29-92	G-S	650,000	N	I	06-13-92	Indef.
ST92-4593	Pacific Gas Transmission Co.	Pacific Gas Transmission Co.	06-29-92	G-S	150,000	N	I	05-30-92	Indef.
ST92-4594	Pacific Gas Transmission Co.	Pacific Gas & Electric Co.	06-29-92	B	14,646	N	I	06-16-92	Indef.
ST92-4595	ANR Pipeline Co.	Kentucky Pipeline & Storage Co.	06-29-92	B	20,000	N	F	06-01-92	Indef.
ST92-4596	ANR Pipeline Co.	Conoco, Inc.	06-29-92	G-S	25,000	N	I	06-01-92	Indef.
ST92-4597	ANR Pipeline Co.	Stand Energy Corp.	06-29-92	G-S	5,000	N	I	06-01-92	Indef.
ST92-4598	ANR Pipeline Co.	Trident Gas Marketing, Inc.	06-29-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4599	Northern Natural Gas Co.	Northern States Power Co.	06-29-92	B	200,000	N	F/I	06-01-92	Indef.
ST92-4600	Northern Natural Gas Co.	Natgas Inc.	06-29-92	B	1,000	N	F/I	06-01-92	Indef.
ST92-4601	Northern Natural Gas Co.	Chevron U.S.A. Production Co.	06-29-92	G-S	50,000	N	F/I	06-01-92	Indef.
ST92-4602	Northern Natural Gas Co.	Westar Transmission Co.	06-29-92	B	1,000	N	F	06-11-92	09-30-92
ST92-4603	Black Marlin Pipeline Co.	Houston Pipe Line Co.	06-29-92	B	30,000	A	I	06-01-92	Indef.
ST92-4604	Stingray Pipeline Co.	Louisiana Dreyfus Energy Corp.	06-29-92	K-S	100,000	N	I	03-16-92	Indef.
ST92-4605	Louisiana Resources Pipeline Co.	Williams Gas Marketing Co.	06-29-92	C	200,000	N	I	05-26-92	Indef.
ST92-4606	Natural Gas P/L Co. of America.	Midcon Marketing Corp.	06-29-92	G-S	60,000	N	I	06-01-92	06-30-92
ST92-4607	Natural Gas P/L Co. of America.	Mobil Natural Gas, Inc.	06-29-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4608	Panhandle Eastern Pipe Line Co.	Amgas, Inc.	06-29-92	G-S	150	N	I	06-12-92	Indef.
ST92-4609	Panhandle Eastern Pipe Line Co.	Amgas, Inc.	06-29-92	G-S	60	N	I	06-12-92	Indef.
ST92-4610	Panhandle Eastern Pipe Line Co.	Amgas, Inc.	06-29-92	G-S	130	N	I	06-12-92	Indef.
ST92-4611	Mid Louisiana Gas Co.	Coast Energy Group, Inc.	06-30-92	G-S	200,000	N	I	06-01-92	03-31-93
ST92-4612	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	06-30-92	B	100,000	N	I	06-01-92	Indef.
ST92-4613	Transcontinental Gas P/L Corp.	Anadarko Trading Co.	06-30-92	G-S	300,000	N	I	06-02-92	Indef.
ST92-4614	Northern Natural Gas Co.	City of Two Harbors.	06-30-92	B	370	N	F	06-01-92	05-31-93
ST92-4615	Mid Louisiana Gas Co.	Shell Gas Trading Co.	06-30-92	G-S	12,000	N	I	06-19-92	03-31-92
ST92-4616	Northern Natural Gas Co.	Fremont Department of Utilities.	06-30-92	B	4,410	N	F	06-01-92	05-31-93
ST92-4617	Panhandle Eastern Pipe Line Co.	Quantum Chemical Corp.	06-30-92	G-S	12,212	N	F	06-01-92	Indef.



<sup>1</sup> Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

<sup>2</sup> Estimated Maximum Daily Volumes includes volumes reported by the Filing Company in MMBTU, MCF and DT.

<sup>3</sup> Affiliation of Reporting Company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 92-19818 Filed 8-20-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-18-000]

### Kentucky West Virginia Gas Co.; Rescheduling of Prefiling Conference

August 17, 1992.

Take notice that the prefiling conference previously scheduled in this proceeding for September 2, 1992, has been rescheduled. A prefiling conference will be convened on September 22, 1992, at 10 a.m., at the Offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of the conference is to address Kentucky West Virginia Gas Company's summary of its proposal to comply with Order No. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Carmen Gastilo at (202) 208-2182.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92-19978 Filed 8-20-92; 8:45 am]

BILLING CODE 6717-01-M

### Office of Fossil Energy

[FE Docket No. 92-101-NG]

### Aluminum Company of America; Application for Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on July 31 and August 5, 1992, of applications by Aluminum Company of America (ALCOA) requesting blanket authorization to import a combined total of up to 5.05 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery. Because of their similarity, DOE is consolidating these two filings into one application. ALCOA states that it would use existing facilities to import the natural gas from Canada.

The application is filed under section 3 of the Natural Gas Act and DOE

Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 21, 1992.

**ADDRESS:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

#### FOR FURTHER INFORMATION:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4587.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

**SUPPLEMENTARY INFORMATION:** ALCOA is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania. ALCOA plans to use the imported gas to operate its two aluminum smelting plants in Wenatchee, Washington and Massena, New York. The gas would enter the United States at Sumas, Washington and Cornwall, Ontario through the pipeline facilities of Northwest Pipeline Corporation and St. Lawrence Gas Company. All of ALCOA's transactions under the requested authorization would be conducted pursuant to market-responsive contract terms.

ALCOA further requests an emergency interim order authorizing it to import the natural gas in the event DOE does not issue a final order before October 1, 1992. ALCOA explains that its current contracts for natural gas to supply its smelting plants are due to expire September 30, 1992 (Wenatchee) and November 1, 1992 (Massena). If necessary to avoid shut-down of these two plants, DOE may issue an emergency interim order allowing deliveries until a final determination is made on ALCOA's application.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an

import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts imports made under the proposed arrangements will be competitive and otherwise consistent with DOE import policy. Parties opposing these arrangements bear the burden of overcoming this assertion.

#### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request



that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ALCOA's consolidated application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 17, 1992.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-20051 Filed 8-20-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4197-1]

### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed August 10, 1992 Through August 14, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920324, Draft EIS, AFS, CA, Last Chance Helicopter Timber Sale, Harvesting Timber and Road Construction/Reconstruction, Plumas National Forest, Greenville Ranger District, Plumas County, CA, Due:

October 5, 1992, Contact: Michael R. Williams (916) 284-7126.

EIS No. 920325, Draft EIS, DOD, Defense Evaluation Support Activity Testing and Evaluation Program for Advanced Weapons Systems, Implementation, Due: October 5, 1992, Contact: Charles Albright (505) 262-4542.

EIS No. 920326, Final EIS, AFS, OR, Canyon Integrated Resource Project, Resource Management Plan, Implementation, Siskiyou National Forest, Illinois Valley Ranger District, Josephine County, OR, Due: October 5, 1992, Contact: William J. Gasow (503) 479-5301.

EIS No. 920327, Draft EIS, FHWA, UT, West Valley Highway Transportation Improvement, 9000 South to 126000 South, Funding and Right-of-Way Acquisition, Salt Lake County, UT, Due: October 10, 1992, Contact: Roy O. Nelson (801) 524-5141.

EIS No. 920328, Final EIS, FAA, NY, Stewart International Airport Properties Improvement, Orange County, NY, Due: October 21, 1992, Contact: Frank Squeglia (718) 553-0902.

EIS No. 920329, Final EIS, AFS, CA, South Fork of the Trinity Wild and Scenic River Management Plan, National Wild and Scenic Rivers, Implementation, Trinity River, Six Rivers and Shasta-Trinity National Forests, Trinity and Humboldt Counties, CA, Due: September 21, 1992, Contact: Roger Jaegel (916) 628-5227.

EIS No. 920330, Draft EIS, UAF, ID, NV, Space Nuclear Thermal Propulsion Program, Construction and Operation, Particle Bed Reactor (PBR) Validation Test Facility, Federal Permits, Licenses and Site Selection, Saddle Mountain Test Station, NV or Contain Test Facility, ID, Due: October 5, 1992, Contact: Cpt. Scott Hartford (512) 536-3806.

EIS No. 920331, Final EIS, BLM, WY, Mulligan Draw Gas Field Project, Natural Gas Field Drilling, Operation, Abandonment and Reclamation, Approval, Right-of-Way Grants, COE Section 404 Permits and EPA RCRA Permits, Sweetwater County, WY, Due: September 21, 1992, Contact: Bob Tigner (307) 324-7171.

EIS No. 920332, Final EIS, AFS, WA, Breezin Timber Sales Management Plan, Implementation, Olympic National Forest, Quilcene Ranger District, Clallam and Jefferson Counties, WA, Due: September 21, 1992, Contact: Jim Rodeheaver (206) 956-2373.

EIS No. 920333, Final EIS, IBR, OR, Milltown Hill Project, Dam and Reservoir Construction and

Operation, Funding and Implementation, Elk Creek Subbasin, Umpqua River Basin, Douglas County, OR, Due: September 21, 1992, Contact: Darrell Cauley (303) 236-0511.

EIS No. 920334, Draft Supplement, AFS, NC, 1986, 2000 Nantahala and Pisgah National Forests Land and Resource Management Plan, Additional Information, Amendment 5, Several Counties, NC, Due: December 16, 1992, Contact: Bjorn M. Dahl (704) 257-4200.

EIS No. 920335, Final Supplement, NOA, WA, OR, CA, Pacific Coast Groundfish Fishery Management Plan (FMP), Updated Information to License Limitation Program, Approval and Implementation of Amendment No. 6, OR, WA and CA, Due: September 21, 1992, Contact: William W. Fox (301) 713-2239.

### Amended Notices

EIS No. 920286, Final EIS, BLM, WA, Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral Leasing, Approval, Yakima River Canyon and Upper Crab Creek Management Areas, Several Counties, WA, Due: August 24, 1992, Contact: Joseph Buesing (509) 353-2570. Published FR 07-24-92—Due Date Correction.

EIS No. 920311, Final EIS, AFS, NM, Felipito Timber Sale, Implementation, Carson National Forest, Rio Arriba County, NM, Due: September 8, 1992, Contact: Graciela Terrazas (505) 581-4554. Published FR 08-07-92—Due Date Correction.

EIS No. 920312, Final EIS, COE, MS, Hickahala-Senatobia Creeks Watershed, Channel Modification Project and Demonstration Erosion Control, Implementation, Arkabutla Lake, Yazoo Basin, Tate County, MS, Due: September 8, 1992, Contact: Mr. Wendell King (601) 631-5967. Published FR 08-07-92—Due Date Correction.

EIS No. 920313, Final EIS, FHWA, AS, Territorial Route 50 in Pago Pago Park, Construction, Funding U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, AS, Due: September 8, 1992, Contact: William R. Lake (808) 541-2700. Published FR 08-07-92—Due Date Correction.

EIS No. 920315, Final EIS, BLM, CA, Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land Exchange, Right-of-Way Approval, Section 404 Permit, Riverside County, CA, Due: September 8, 1992, Contact: Steve



Nagle (619) 323-4421. Published FR 08-07-92—Due Date Correction. EIS No. 920323, Draft EIS, USN, CA, AZ, US Naval Observatory Optical Interferometer Project, Construction, Operation and Site Selection, Anderson Peak and Chews Ridge in Los Padres National Forest, Monterey County, CA or US Naval Observatory Station in Flagstaff County, AZ, Due: October 13, 1992, Contact: Patricia Duff (415) 244-3715. Published FR 08-14-92—Due Date Correction.

Dated: August 18, 1992.

William D. Dickerson,  
Deputy Director, Office of Federal Activities.  
[FR Doc. 92-20059 Filed 8-20-92; 8:45 am]  
BILLING CODE 6560-50-M

[ER-FRL-4197-2]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 03, 1992 Through August 07, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

### Draft EISs

ERP No. D-AFS-J65193-MT Rating E02, Beaver-Dry Timber Sales, Harvest Timber and Road Construction, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT.

*Summary:* EPA had environmental objections to the proposed project based on impacts to water quality, wildlife, and visual quality. The final EIS should include a water quality monitoring plan, an evaluation of wetlands, and an assessment of cumulative impacts.

ERP No. D-AFS-L65168-AK Rating EC2, North and East Kuui Timber Harvest, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Kuui Island, AK.

*Summary:* EPA had environmental concerns based on the sale's impact on water quality and that the implementation of best management practices may not ensure that the Alaska Water Quality Standards (WQS) are being met. Additional information is

needed on effectiveness monitoring from the water quality effects of timber harvest and road construction.

ERP No. D-AFS-L65171-WA Rating EC2, Easton Ridge Timber Sale and Road Construction, Implementation, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA.

*Summary:* EPA had environmental concerns based on the effect of the action alternatives on water quality, fisheries, and air quality. Additional information is needed on watershed monitoring, water quality and fishery effects, air quality effects, endangered species, and noise effects.

ERP No. D-COE-E36170-MS Rating EC2, Hickahala-Senatobia Creeks Watershed, Channel Modification Project and Demonstration Erosion Control, Implementation, Arkabutla Lake, Yazoo Basin, Tate County, MS.

*Summary:* EPA raised concerns regarding whether the mitigation for the unavoidable losses associated with this project is sufficient and/or will be successful. EPA noted that additional information will need to be collected during the forthcoming monitoring to determine efficacy of the plan and its sufficiency. Any shortcomings noted by these observations will need to be rectified.

ERP No. D-COE-K32046-CA Rating 3, Los Angeles and Long Beach Harbors Navigation Improvements and Landfill Development Project, Construction and Approval of Master Plan Amendment, San Pedro Bay, Los Angeles County, CA.

*Summary:* EPA identified several serious inadequacies in the draft EIS and recommended that the Corps prepare a supplemental EIS to address these issues. The proposed project has potential adverse air quality impacts for all criteria air pollutants under the Clean Air Act and the DEIS failed to demonstrate Clean Air Act conformity. Other deficiencies in the DEIS included the adequacy of mitigation to compensate for the unavoidable loss of waters of the US due to dredging and filling activities and other requirements of section 404 of the Clean Water Act. EPA's letter noted that if these issues were not satisfactorily resolved by the Corps, that the project may be a candidate for referral to the President's Council on Environmental Quality.

ERP No. D-FHW-E40132-FL Rating E02, North Suncoast Corridor, Transportation Improvement and Construction, Northwest Expressway Zone 1 in Hillsborough Co., to U.S. 98 in Hernando Co., to Zone 2 FL-52 in Pasco Co., Funding and section 404 Permit, Hillsborough, Hernando and Pasco Counties, FL.

*Summary:* EPA expressed objections to the amounts and types of impacts to wetland and upland habitat. Additional information on wetland mitigation is needed.

ERP No. D-FHW-G40131-LA Rating EC2, I-49 Connector, Evangeline Thruway, U.S.-90/US-167, Funding, Right-of-Way Acquisition and COE section 10 and 404 Permits, Lafayette County, LA.

*Summary:* EPA is concerned about the lack of analysis of and mitigation for noise impacts. Additionally, there is insufficient information to fully evaluate impacts to and mitigation for wetlands, water wells and groundwater.

ERP No. D-NPS-B61018-VT Rating E01, Appalachian National Scenic Trail Protection, from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT.

*Summary:* EPA expressed environmental objections based on the impacts to water resources. Further information is needed on cumulative, ski development, and water resource impacts.

ERP No. DS-AFS-J61074-MT Rating EC1, White Stallion Timber Sale Management, Implementation, Additional Analysis, Darby Ranger District, Bitterroot National Forest, Ravalli County, MT.

*Summary:* EPA had environmental concern based on water quality issues.

ERP No. DS-AFS-L65147-AK Rating EC2, Bohemia Mountain Timber Sales, Implementation, Updated Information to Limit Alternatives to those that would not Impact Potential Recommendation of Duncan Salt Chuck Creek from Inclusion in the National Wild and Scenic River System and COE Permit Issuance, Tongass National Forest, Petersburg Ranger District, Stikine, AK.

*Summary:* EPA had environmental concerns with the project based on the possible effect of the action alternatives on water quality and fisheries. Additional information is needed on monitoring.

ERP No. D1-BLM-L70001-WA Rating EC-2, Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral Leasing, Implementation, Yakima River Canyon and Upper Crab Creek Management Areas, Several Counties, WA.

*Summary:* EPA expressed environmental concerns based on the lack of a clear policy statement requiring a NEPA evaluation of site specific impacts associated with exploration and development/production drilling. The final EIS should



clarify how site specific impacts will be evaluated.

#### FINAL EISs

ERP No. F-AFS-J65133-UT. Roundy Reservoir Area Timber Sale and Road Construction, Implementation, Dixie National Forest, Aquarius Plateau, Escalante Ranger District, Garfield County, UT.

**Summary:** EPA had no objection to the proposed project.

ERP No. F-BLM-J02018-MT. Blackleaf Unit Oil and Gas Exploration and Development, Implementation, Great Falls Resource Area, Rocky Mountain Front, Teton County, MT.

**Summary:** EPA believed that most issues had been addressed in the final EIS. EPA had environmental concerns relating to potential escape of toxic gases from the associated gas conditioning plant.

ERP No. F-BLM-J67013-WY. West Rocky Butte (WRB) Tract Coal Lease Application (WYW122586) combined with the existing Rocky Butte Tract (WYW78633) Logical Mining Unit (LMU) Mine Leasing and Land Acquisition, Powder River Basin, Campbell County, WY.

**Summary:** EPA had no objections to the proposed project.

ERP No. F-BOP-E81032-FL. Coleman Federal Correctional Complex (FCC), Construction and Operation, North of County Road 470 between Oakhumpka and Sumterville, Sumter County, FL.

**Summary:** EPA expressed concern about minor unresolved noise issues related to construction.

ERP No. F-COE-K36104-CA. Sacramento River Flood Control System and Flood Protection, Phases II-V, Implementation, Red Bluff to Collinsville, CA.

**Summary:** EPA commended the Corps for its efforts to avoid and minimize potential environmental impacts. EPA urged the Corps to provide evaluations or plans in the site-specific environmental documentation for each phase including analysis of the: Feasibility of an integrated floodway management approach; potential impacts to water quality, hydrology, air quality and noise; contingency planning for unexpected additional reconstruction requirements; downstream hydrologic impacts of levee repair and mitigation for these impacts; detailed description of mitigation and post-project monitoring plan; wetland water sources and the potential increase in downstream flood stages.

ERP No. F-FHW-K40185-NV. Las Vegas Beltway Southern Segment Construction, U.S. 93/Boulder Highway

in the City of Henderson to the intersection of Durango Drive and Tropicana Avenue on the West. Funding, section 10 and 404 Permits Clark County, NV.

**Summary:** EPA felt that the final EIS addressed in part the concerns EPA raised on the draft EIS. EPA requested that the Record of Decision contain commitments to reduce the project's air quality impacts (carbon monoxide and particulate matter less than 10 microns in diameter) and to maintain and protect water quality in the project area.

ERP No. FS-AFS-J65095-00. Rocky Mountain Regional Guide/Plan, Silviculture Standards and Guidelines for Land and Resource Management Planning, CO, SD, WY, NB, and KS.

**Summary:** EPA had no objections to the proposed project.

Dated: August 18, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-20060 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-M

#### [FRL-4195-1]

#### Public Water System Supervision Program: Program Revision for the State of Missouri

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

Notice is hereby given that the State of Missouri is revising its approved State Public Water System Supervision (PWSS) Program. Missouri has adopted regulations for (1) filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria published by EPA on June 29, 1989 (54 FR 27486); (2) total coliforms (including fecal coliforms and *E. coli*) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and *E. coli*) published by EPA on June 29, 1989 (54 FR 27544); (3) public notification requirements that correspond to the National Primary Drinking Water Regulations for public notification published by EPA on October 28, 1987 (52 FR 41534); and (4) synthetic organic chemicals (Phase I VOCs) that correspond to the National Primary Drinking Water Regulations for synthetic organic chemicals, and monitoring for unregulated contaminants published by EPA on July

8, 1987 (52 FR 25690) and corrections, published on July 1, 1988 (53 FR 25108).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon a thorough evaluation of Missouri's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this notice date.

Fivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the *Federal Register* and in newspapers of general circulation in the State of Missouri. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Missouri. The hearing notice will include a statement of purpose, information regarding time and location, and the



address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

A copy of the primacy application relating to this determination are available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Missouri Department of Natural Resources, Public Drinking Water Program, 101 Jefferson Street, Jefferson City, Missouri 65102.

**FOR FURTHER INFORMATION CONTACT:** M. Stan Calow, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551-7410.

**Authority:** Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: July 20, 1992.

**Morris Kay,**

*Regional Administrator, EPA, Region VII.*

[FR Doc. 92-19537 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL TRADE COMMISSION

[Dkt. C-3389]

### Circuit City Stores, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Virginia-based national chain of consumer electronics and appliance stores to comply with the Magnuson-Moss Warranty Act and the Pre-Sale Availability of Written Warranty Terms Rule, which requires retailers to make manufacturers' warranty information available to consumers, either (1) by displaying the text of the warranty near the warranted product, or (2) by furnishing the text of the warranty to customers upon request prior to sale, and prominently displaying signs<sup>1</sup> advising customers of the availability of such warranties.

**DATES:** Complaint and order issued August 3, 1992.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA 94103, (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** On Wednesday, May 27, 1992, there was published in the *Federal Register*, 57 FR 22241, a proposed consent agreement with analysis in the Matter of Circuit City Stores, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-20011 Filed 8-20-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3388]

### The Good Guys, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a California-based chain of consumer electronics stores to comply with the Magnuson-Moss Warranty Act and the Pre-Sale Availability of Written Warranty Terms Rule, which require retailers to make manufacturers' warranty information available to consumers, either (1) by displaying the text of the warranty near the warranted product, or (2) by furnishing the text of the warranty to customers upon request prior to sale, and prominently displaying signs advising customers of the availability of such warranties.

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

**DATES:** Complaint and order issued July 31, 1992.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA 94103, (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** On Wednesday, May 27, 1992, there was published in the *Federal Register*, 57 FR 22243, a proposed consent agreement with analysis in the Matter of The Good Guys, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-20010 Filed 8-20-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3387]

### Rohm & Haas Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, Rohm and Haas, a Pennsylvania-based company, to acquire the Union Oil Company's emulsion polymer assets, as long as it divests Union Oil's straight acrylics business to Union Carbide, or another FTC-approved buyer, within 180 days. If divestiture is not effected within that period, Rohm and Haas is required to consent to the appointment of a trustee. In addition, the consent agreement requires the respondents to assist the buyer in making the transition to full production and, for 10 years, requires the respondents to obtain FTC approval before acquiring any entity

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.



that produces straight acrylics for exterior house paint.

**DATES:** Complaint and Order issued July 31, 1992.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Marc Schildkraut, FTC/S-3302, Washington, DC 20580. (202) 326-2622.

**SUPPLEMENTARY INFORMATION:** On Wednesday, May 27, 1992, there was published in the *Federal Register*, 57 FR 22245, a proposed consent agreement with analysis in the Matter of Rohm and Haas Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-20009 Filed 8-20-92; 8:45 am]

**BILLING CODE 6750-01-M**

[Docket 9245]

#### **Viral Response Systems, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.  
**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Connecticut based corporation and its president from making false and unsubstantiated claims regarding the efficacy of their "Viralizer System", a hand-held device for treating colds and allergies, and also prohibits respondents from misrepresenting the existence, content, validity, results, conclusions, or interpretations of any test or study.

**DATES:** Complaint issued February 4, 1991. Order issued July 31, 1992.<sup>1</sup>

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

<sup>2</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** On Tuesday, February 4, 1992, there was published in the *Federal Register*, 57 FR 4207, a proposed consent agreement with analysis in the Matter of Viral Response Systems, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-20008 Filed 8-20-92; 8:45 am]

**BILLING CODE 6750-01-M**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **Alcohol, Drug Abuse, and Mental Health Administration**

##### **Mental Health Services**

**ACTION:** Notice of Request for Comments.

**SUMMARY:** The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) is soliciting input from the public for definitions of two populations: (1) Adults with Serious Mental Illness, and (2) Children With a Serious Emotional Disturbance.

Public Law 102-321, The ADAMHA Reorganization Act, enacted July 10, creates a new Substance Abuse and Mental Health Services Administration (SAMHSA). A new Center for Mental Health Services is established within SAMHSA to provide national leadership in the prevention and treatment of mental disorders.

Title II of the Act establishes a separate Block Grant for Mental Health Services in the Center. The Block Grant will be used to provide community mental health services to adults with serious mental illness and children with a serious emotional disturbance. Under Title II of the Act, the Secretary of

Health and Human Services is required, within 90 days of enactment, to establish and disseminate to the States definitions of adults with serious mental illness and children with serious emotional disturbances and to establish standard methods for making required estimates of incidence and prevalence which the States will use as a condition for receiving the grant. This responsibility has been assigned by the Secretary to ADAMHA in preparation for the creation of the new SAMHSA.

Preliminary to publication of definitions in the *Federal Register* in early October, ADAMHA is soliciting comments from the public concerning definitions both of "adults with serious mental illness" and "children with a serious emotional disturbance" which meet the needs of the States and constituency groups.

**ADDRESS:** Interested organizations and/or individuals should send comments by September 4 to: Irene S. Levine, Ph.D., ADAMHA, 12-95 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: August 19, 1992.

**Joseph R. Leone,**

*Associate Administrator for Management, ADAMHA.*

[FR Doc. 92-20199 Filed 8-20-92; 8:45 am]

**BILLING CODE 4160-20-M**

##### **Food and Drug Administration**

[Docket No. 92D-0039]

##### **Animal Drug Manufacturing; Guidelines for Submission of Manufacturing Information; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a series of four Center for Veterinary Medicine (CVM) guidelines entitled "Animal Drug Manufacturing Guidelines, 1992." The guidelines describe the data and information for the manufacturing portions of an application for a pharmaceutical dosage form new animal drug product.

**DATES:** Written comments on these guidelines may be submitted at any time.

**ADDRESSES:** Submit written comments on "Animal Drug Manufacturing Guidelines, 1992," to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Submit written requests for single



copies of "Animal Drug Manufacturing Guidelines, 1992," to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Animal Drug Manufacturing Guidelines, 1992," and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

William G. Marnane, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8678.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a series of four guidelines concerning data and information for specific manufacturing portions of applications (original, abbreviated, and supplemental) for pharmaceutical dosage form products. The guidelines, entitled "Animal Drug Manufacturing Guidelines, 1992," cover pilot batch manufacture, tentative expiration dates, manufacturing sites, and new animal drug substance sources. The sponsor of a new animal drug application (NADA), an abbreviated new animal drug application (ANADA), or a supplemental NADA or ANADA is required to furnish to FDA manufacturing information as part of the application. This information is generally described in 21 CFR 314.1 for NADA's, 21 CFR 314.8 for supplements to approved NADA's, and 21 CFR parts 210 and 211 for the manufacturing process to meet current good manufacturing practice (CGMP) requirements for pharmaceutical dosage forms.

CVM believes that the data and information contained in chemistry/manufacturing submissions in ANADA's for evaluation of generic pharmaceutical dosage forms should be consistent with the information being used by the Center for Drug Evaluation and Research (CDER) for the evaluation of abbreviated new drug applications (ANDAs). This consistency will help ensure that marketed generic veterinary pharmaceutical dosage forms meet the same criteria of quality, strength, and purity as similar human dosage forms, that FDA can harmonize the review process for veterinary and human pharmaceutical dosage forms, and that FDA district offices can apply the same

interpretation of CGMP's to both veterinary and human pharmaceutical dosage form drug products.

There are a number of differences in the type and extent of data necessary for ANADA's and NADA's. For this reason, and to provide consistent recommendations for the different types of submissions, the guidelines describe not only the manufacturing data and information necessary for ANADA's and supplemental ANADA's, but also data and information to support the manufacturing and chemistry sections of NADA's and supplemental NADA's.

These "Animal Drug Manufacturing Guidelines, 1992," are not intended to be individual stand-alone documents. Much of the information presented in one guideline may be equally important to the correct interpretation of the other guidelines. Therefore, all four guidelines are being issued concurrently.

These guidelines state procedures or practices that may be useful to the persons to whom they are directed but are not legal requirements. A person may follow the guidelines or may choose to follow alternate procedures. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent an expenditure of time, money, and effort on activities that may later be determined to be unacceptable to FDA. The guidelines do not bind the agency, nor do they create or confer any rights, privileges, or benefits for or on any person. Where the guideline states that a requirement is imposed by statute or regulation, the requirement is law and its force and effect cannot be changed in any way by virtue of its inclusion in the guideline.

Interested persons may submit written comments on "Animal Drug Manufacturing Guidelines, 1992," to the Dockets Management Branch (address above). Comments will be considered in evaluating the need to amend the guidelines. Two copies of comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidelines and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 14, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-19997 Filed 8-20-92; 8:45 am]

BILLING CODE 4160-01-F

## Health Care Financing Administration

[BPD-751-N]

### Medicare Program; HHS' Recognition of NAIC Model Standards for Regulation of Medigap Policies

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice contains a list of the ten standardized Medicare supplemental insurance benefit packages that may be offered to Medicare beneficiaries consistent with the requirements of section 1882 of the Social Security Act (the Act), as amended by sections 4351 through 4358 of the Omnibus Budget Reconciliation Act of 1990. This list is included in section 9 of the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on July 30, 1991, which is reprinted at the end of the notice. Until the publication of this list, certain provisions of section 1882 of the Act relating to this type of insurance were inapplicable to sellers who are not also the issuers of health insurance policies being sold to Medicare beneficiaries.

**DATES:** With limited exceptions explained in section II.A of this notice, section 1882(a) of the Act provides that Medicare supplemental insurance policies that do not conform to the revised NAIC Model Standards may not be issued to Medicare beneficiaries. This provision is effective July 30, 1992, or on an earlier date on which the State adopts the revised standards.

The amended provisions of sections 1882(d)(3) of the Act (relating to the sale of duplicative health insurance coverage, as explained in section III of this notice) may be applied to persons who sell health insurance policies as of the date of this notice. These amended provisions were effective with respect to issuers of such policies as of November 5, 1991.

In States that have already adopted the revised NAIC Standards, the provisions of sections 1882(p)(8) (relating to the sale of non-standardized Medicare supplemental policies) and 1882(p)(9) of the Act (relating to selling a Medicare supplemental policy without first making available a core benefit plan and giving the beneficiary an outline of coverage) are applicable to sellers as of the date of this notice. In those States, sections 1882(p)(8) and 1882(p)(9) were applicable to issuers as of the effective date of the standards in the State of issuance. In States that have not yet adopted the revised standards,



these statutory provisions are applicable to both issuers and sellers as of July 30, 1992, or on an earlier date on which the State adopts the revised standards.

**ADDRESSES: Copies:** To order copies of the *Federal Register* containing this document, send your request to: Superintendent of Documents, U.S. Government Printing Office, Attn: New Order, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 512-2250. The cost for each copy is \$1.50. In addition, you may view and photocopy the *Federal Register* document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the *Federal Register*. The order desk operator will be able to tell you the location of the U.S. Government Depository Library nearest to you.

**FOR FURTHER INFORMATION CONTACT:** Julie Walton, (410) 966-4622.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. The Medicare Program**

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services for persons 65 years of age or older, disabled beneficiaries, and other persons with end-stage renal disease. The program currently covers approximately 32.1 million aged and 3.4 million disabled individuals.

The Medicare program consists of two separate but complementary insurance programs, a hospital insurance program (part A) and a supplementary medical insurance program (part B). Although part A is called hospital insurance, it also covers services furnished by other entities, including skilled nursing facilities, home health agencies, and hospices.

Part B covers a wide range of medical services and supplies, including those furnished by physicians or others in connection with physician services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Physician services covered under part B include visits to patients in the home, office, hospital, and other institutions. Part B also covers certain drugs and

biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare program provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of providing medical care for Medicare beneficiaries. Amounts payable under both parts A and B are reduced by certain deductibles and coinsurance amounts, for which the beneficiary is responsible.

In 1992, the part A inpatient hospital deductible is \$652 for each "benefit period" (the period beginning on the first day of hospitalization and extending until the beneficiary is no longer an inpatient of a hospital or skilled nursing facility for 60 consecutive days).

The part B deductible is \$100 for the calendar year. Beneficiaries are also responsible for paying certain coinsurance amounts for covered items and services. For example, the coinsurance applicable to physicians' services under part B is generally 20 percent of the Medicare-approved amount for the service. When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount ("excess charges"), up to a limit established under the Act. (In 1992, physicians who do not accept assignment of the Medicare claim may charge up to 20 percent more than the Medicare-approved amount.)

Also, there are a number of items and services that are not covered under either part A or part B. For example, custodial nursing home care, most dental care, eyeglasses, and most prescription drugs are not covered by Medicare. Beneficiaries must pay the full cost of these services out-of-pocket or may purchase additional private insurance to help pay the costs.

Because Medicare does not cover the total cost of providing medical care, approximately 75 percent of aged Medicare beneficiaries purchase (or have provided to them) some type of private health insurance coverage to help pay for medical expenses. This coverage includes Medicare supplemental insurance, employer group health plans, hospital indemnity insurance, nursing home or long-term care insurance, specified disease insurance, and coordinated care plans that may or may not contract with Medicare (these include plans offered by health maintenance organizations

(HMOs) and competitive medical plans (CMPs)).

**B. Medicare Supplemental Insurance**

Medicare supplemental insurance policies, also known as "Medigap" policies, are designed to fill specific gaps in the Medicare benefit structure. They typically provide coverage for some or all of the deductible and coinsurance amounts applicable to Medicare-covered services, and sometimes cover items or services that are not covered by Medicare at all.

Specific standards for Medicare supplemental policies were incorporated into the Social Security Act by section 902(a) of the Social Security Disability Amendments of 1980 (Pub. L. 96-285), known as the Baucus Amendments, in an effort to address certain abuses associated with the sale of health insurance to the elderly. Section 902(a) added section 1882 to the Act, which established a voluntary certification program under which a Medicare supplemental policy could be certified by a Federal panel as meeting certain minimum standards, including the standards contained in the "NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act," adopted by the NAIC on June 6, 1979. The standards contained in this model regulation are known as the "NAIC Model Standards". In addition, section 1882 of the Act provided that Medigap policies issued in a State would be deemed to meet the certification requirements if the State's program regulating Medicare supplemental policies provided for the application of standards at least as stringent as those contained in the NAIC Model Regulation and in section 1882 of the Act.

Regulations implementing these provisions are contained in 42 CFR part 403, subpart B. Since the publication of these regulations, Congress has amended section 1882 of the Act a number of times, and corresponding amendments have been made in the NAIC Model Standards. We anticipate publishing a proposed rule that would update our part 403 regulations to incorporate all the changes in the law that have occurred over the past five years, including amendments made by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted on December 22, 1987), the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988), the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted on December 13, 1989), and the Omnibus Budget Reconciliation Act of 1990 (Pub.



L. 101-508, enacted on November 5, 1990).

Section 1882 of the Act and our implementing regulations at 42 CFR part 403, subpart B, address only Medicare supplemental policies, as defined in section 1882(g)(1) of the Act. This definition excludes policies offered by an employer to employees or former employees and policies or plans offered by a labor organization to members or former members. Since enactment of Public Law 101-508, HMO plans that contract with Medicare under sections 1833 and 1876 of the Act or under a demonstration authority are also excluded from the definition of a Medicare supplemental or Medigap policy. The current statutory definition does, however, include "Medicare wrap around" products sold by HMOs to individuals and nonemployment-related groups.

## II. The Omnibus Budget Reconciliation Act of 1990

### A. Standardization of Benefit Packages

The changes made to section 1882 of the Act by sections 4351 through 4358 of Public Law 101-508 with respect to Medicare supplemental insurance are extensive. They require, first of all, simplification and standardization of Medicare supplemental policies by providing that, with limited exceptions, no more than ten different benefit packages may be offered in all States and by all issuers. Of these ten benefit packages, one must cover only a "core" group of basic benefits and all others must include the core benefits. All insurers offering any of the other Medigap policies for sale must also make the core plan available. Furthermore, the provisions in Public Law 101-508 require uniform language, definitions, and format to be used in the policies.

The 1990 amendments provided that if, within nine months of enactment, NAIC adopted revised model standards delineating these ten authorized benefit packages, uniform language, definitions, and format, and other requirements consistent with the provisions of Public Law 101-508, then the references in section 1882 of the Act to the NAIC's 1979 Model Regulation would include the revised NAIC Standards. The NAIC developed the required revisions to its "Medicare Supplement Insurance Minimum Standards Model Act" and "Model Regulation" within the nine month time frame provided by Congress in section 1882(p)(1)(A) of the Act. The NAIC adopted the revised standards on July 30, 1991.

Section 1882(a)(2) of the Act provides that no Medicare supplemental policy may be issued in a State after the effective date of the revised NAIC Standards unless the State's regulatory program has been approved by HCFA as providing for the application and enforcement of the revised standards, or (if the State's program has not been approved) the policy has been certified by HCFA as meeting the standards. Section 1882(p)(1)(C) of the Act provides that the effective date of the revised standards is the date the State adopts the standards or one year after the NAIC's adoption of the standards, whichever is earlier, except in States that HCFA identifies as requiring new legislation to implement the standards but whose legislatures are not scheduled to meet in 1992 in a session at which these matters may be acted upon.

For policies issued in these "grace period" States, section 1882(p)(1)(C) of the Act provides that the effective date of the revised standards will be extended until the first day of the first quarter following the end of the first legislative session that begins on or after January 1, 1992. Since the enactment of Public Law 101-508 and the NAIC's adoption of the revised Model Standards, HCFA has contacted each State to apprise them of these new requirements. Based on these contacts and consultation with the NAIC, we have identified two States that may need an extension under the grace period provisions of the statute—Montana and Oregon.

The standards contained in the revised NAIC Model Regulation (including the description of the ten benefit packages that may be offered, except in "waiver" States, as explained in section II.B of this notice) accordingly apply to Medicare supplemental policies issued in a State on or after July 30, 1992, or an earlier date on which a State adopts the standards, unless the State of issuance qualifies for a "grace period."

Because of these requirements for total standardization of benefit plans, States, in amending their regulatory programs to implement these new requirements, must adopt the benefit packages precisely as they have been devised by the NAIC with only limited exceptions permitted by statute. These exceptions are as follows. First, States that have received a waiver under section 1882(p)(6) may authorize the sale of policies that contain different benefits than the ten standardized benefit packages, as explained in section II.B. Second, section 1882(p)(4)(B) of the Act allows States to approve the addition of new or innovative benefits to an

otherwise approved standardized plan. Third, under section 1882(p)(5) of the Act, while a State must approve the core plan A for sale in the State, it does not have to permit any or all of the other nine plans to be sold in the State. That is, the State may reduce the number of standardized plans that are permitted to be sold in the State from ten to some smaller number so long as the core plan is offered. Aside from these three exceptions, the State must adopt standardization requirements identical to those in the NAIC Model in order for the State's regulatory program to be approved.

### B. States with Alternative Simplification Programs

Section 1882(p)(6) of the Act permits the Secretary to waive the application of standards regarding the limitation of benefits in those States that, on the date of enactment of Public Law 101-508 (November 5, 1990), had in place an alternative simplification program. The Conference Report accompanying Public Law 101-508 (H.R. Conf. Rep. No. 964, 101st Cong., 2nd Sess. 783 (1990)), in its discussion of the then current law, notes that "The States of Massachusetts, Minnesota, and Wisconsin have implemented their own standardized benefit options."

These three States with pre-existing alternative benefit standardization or simplification programs applied to HCFA for a waiver of the standardization requirements. All three were granted waivers. Therefore, policies sold in those States must conform to those States' unique requirements for benefit packages rather than to the ten standardized benefit packages adopted by the NAIC in the Model Standards.

### C. Other Amendments Applicable to Medicare Supplemental Insurance

The way in which the Federal Medicare supplemental policy standards are enforced was also changed completely by Public Law 101-508. The Supplemental Health Insurance Panel, which formerly monitored States' voluntary compliance with certain minimum standards, was abolished and replaced with a Federal process under which we must directly review and approve States' regulatory programs. The formerly voluntary certification program has been made mandatory in States that either do not receive our approval of their programs regulating Medicare supplemental policies or lose approved status at some future time.

Public Law 101-508 included a variety of penalty provisions, some of which



relate to the sale of nonstandardized policies and policies that duplicate other health benefits. These nonstandardization and nonduplication penalty provisions are discussed separately in section III of this notice.

Public Law 101-508 also added a number of other new standards for Medigap policies in addition to the standardization and anti-duplication requirements. These requirements are not the subject of this notice but will be dealt with in future rulemaking. They include the following:

- All new Medicare supplemental policies must be guaranteed renewable.
- Medicare supplemental policies must provide for the suspension of premiums and benefits under the policy when a policyholder is eligible for Medicaid and requests the suspension within 90 days of gaining Medicaid eligibility. This suspension may last for up to 24 months. If, at any time during the 24 months, the individual loses Medicaid eligibility, the insurer must reinstate coverage (effective as of the date of loss of Medicaid eligibility) if the policyholder requests the reinstatement of the policy within 90 days of the loss of Medicaid eligibility (and resumes payment of the premiums).

- Individual Medicare supplemental policies must meet a minimum loss ratio standard of 65 percent instead of the previous 60 percent requirement. Group policies continue to be required to meet a minimum 75 percent loss ratio standard. A loss ratio expresses the relationship between the aggregate amount of premiums collected under a policy to the aggregate amount of benefits paid out under it.

- Policies must provide refunds or premium credits if they fail to achieve the required loss ratio beginning with the third year of the policy's life.

- The issuer of a replacement policy must waive any time periods applicable to pre-existing conditions, waiting periods, or other similar elimination or probationary periods to the extent the time was spent under the original policy for similar benefits. These time periods may never be longer than 6 months.

- Medicare supplemental policies must provide a 6-month open enrollment period to Medicare beneficiaries who are 65 or older when they first enroll in Medicare Part B. During the open enrollment period, the issuer of the policy may not condition to policy's issuance or effectiveness or discriminate in pricing based on the health status, claims experience, or medical condition of the applicant. An insurer may restrict payment under a policy (which otherwise contains a pre-existing conditions clause) for a period of up to 6

months on claims relating to a pre-existing condition. A pre-existing condition is defined as a condition for which medical advice was given, or treatment was recommended by or received from a physician within 6 months before the effective date of the policy.

- Finally, Public Law 101-508 authorized a new type of policy, known as Medicare SELECT, which permits differential payment of benefits depending on whether the beneficiary receives services through a preferred provider organization (PPO) or specified network of providers. That is, Medicare SELECT policies may restrict or eliminate payment of deductibles and coinsurance that the policy would otherwise cover if the plan participant uses non-network providers. These policies should be available in 15 States during 1992, 1993, and 1994. As noted above, prepaid plans that offer Medicare supplemental products outside of Federal contracts under section 1833(a)(1)(A) of the Act (providing for reasonable cost reimbursement to health care prepayment plans (HCPPs)), section 1876 of the Act (providing for payments based on a predetermined capitation rate or reasonable cost to contracting HMOs and CMPs), or under a demonstration authority are also subject to regulation as Medicare supplemental policies under section 1882 of the Act and these model standards. A notice announcing the 15 States in which these policies may be sold was published in the *Federal Register* on September 20, 1991 (56 FR 47763). Minimum standards for Medicare SELECT policies are also included in the July 30, 1991 NAIC Model Regulation.

The requirements from Public Law 101-508 are all reflected in the revised NAIC Standards. In order to be approved under section 1882 of the Act, the State regulatory programs must provide for the application and enforcement of requirements equal to or more stringent than these revised standards.

### III. Publication of List for Standardized Benefit Packages

Public Law 101-508 also included certain penalty provisions relating to the sale of nonstandardized policies and policies that duplicate other health benefits, which may not be applied to a seller who is not the issuer of the policy until we publish a list of the standardized Medicare supplemental benefit packages that may be offered in a State when the requirements of the revised model standards become effective. Issuers of health insurance policies generally include insurance

companies, fraternal benefit societies, health care service plans, health maintenance organizations, and similar entities (see section 4.D of the NAIC Model Regulation). A seller who is not the issuer of the policy would include any other individual or entity that sells a health insurance policy to a Medicare beneficiary, including insurance agents, brokers, solicitors, and producers.

The publication of this list is required by sections 1882(d)(3)(A) and 1882(p)(10) of the Act, as amended by sections 4354(a)(1)(F) and 4351(a)(3) of Public Law 101-508, respectively. This list of standardized Medicare supplemental benefit packages is contained in section 9.E of the revised Model Regulation adopted by the NAIC on July 30, 1991, which is reprinted at the end of this notice. A description of each standardized "core" benefit, which must be included in all of the ten benefit packages, is contained in section 8.B of the NAIC Model Regulation, and section 8.C describes each of the other standardized benefits. Section 16 of the Model Regulation includes a chart that outlines the benefits covered in each of the ten standardized plans A through J.

Because it is necessary to refer to more than one section of the NAIC Model Regulation to determine the content of each standardized benefit package, we are providing the following summary of the ten packages.

#### *Plan A (Core Benefit Plan) (NAIC Model Section 9.E.1(j))*

- Part A coinsurance for hospitalization (which begins with the 61st day of hospitalization in Medicare benefit period), plus coverage for 365 additional days after Medicare benefits end (NAIC Model Section 8.B(1)-(3));
- Part B coinsurance (generally 20 percent of Medicare-approved expenses) (NAIC Model Section 8.B(5)); and
- First three pints of blood each year (NAIC Model Section 8.B(4)).

(Note that Plan A provides no coverage for benefits described in paragraphs (1) through (11) of NAIC Model Section 8.C: the Part A inpatient hospital deductible (currently \$652 for each Medicare benefit period); the Part B deductible (\$100 each year); Part A coinsurance for post-hospital skilled nursing facility care; Part B charges in excess of Medicare-approved amounts; non-Medicare-covered prescription drugs, preventive services, at-home recovery services, or services received in a foreign country; or new or innovative benefits approved by the



State insurance commissioner or by HCFA.)

*Plan B (NAIC Model Section 9.E.(2))*

- The core benefits (NAIC Model Section 8.B.(1)–(5)); and
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1)).

*Plan C (NAIC Model Section 9.E.(3))*

- The core benefits (NAIC Model Section 8.B.(1)–(5));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- The Part B annual deductible (NAIC Model Section 8.C.(3)); and
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8)).

*Plan C (NAIC Model Section 9.E.(4))*

- The core benefits (NAIC Model Section 8.B.(1)–(5));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8)); and
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in Section 8.C.(10) of the NAIC Model.

*Plan E (NAIC Model Section 9.E.(5))*

- The core benefits (NAIC Model Section 8.B.(1)–(5));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- Eighty percent of charges for emergency care received in a foreign

country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8)); and

- Preventive health services not covered by Medicare, subject to a \$120 maximum annual benefit (NAIC Model Section 8.C.(9)).

*Plan F (NAIC Model Section 9.E.(6))*

- The core benefits (NAIC Model Section 8.B.(1)–(5));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- The Part B annual deductible (NAIC Model Section 8.C.(3));
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(5)); and
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8)).

*Plan G (NAIC Model Section 9.E.(7))*

- The core benefits (NAIC Model Section 8.B.(1)–(3));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- Eighty percent of Part B excess charges (80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(4));
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8)); and
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from

an illness, injury or surgery, subject to limitations described in section 8.C.(10) of the NAIC Model Regulation.

*Plan H (NAIC Model Section 9.E.(8))*

- The core benefits (NAIC Model Section 8.B.(1)–(3));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8)); and
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a \$250 calendar year deductible and a maximum \$1,250 in benefits per calendar year (NAIC Model Section 8.C.(6)).

*Plan I (NAIC Model Section 9.E.(9))*

- The core benefits (NAIC Model Section 8.B.(1)–(3));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(5));
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum benefit of \$50,000 (NAIC Model Section 8.C.(8));
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in section 9.C.(10) of the NAIC Model Regulation; and
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a \$250



calendar year deductible and a maximum \$1,250 in benefits per calendar year (NAIC Model Section 8.C.(6)).

*Plan J (NAIC Model Section 9.E.(10))*

- The core benefits (NAIC Model Section 8.B.(1)–(3));
- The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
- The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
- The Part B annual deductible (NAIC Model Section 8.C.(3));
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(5));
- Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a \$250 calendar year deductible and a lifetime maximum of \$50,000 (NAIC Model Section 8.C.(8));
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in section 9.C.(10) of the NAIC Model Regulation;
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a \$250 calendar year deductible and a maximum \$3,000 in benefits per calendar year (NAIC Model Section 8.C.(7)); and
- Preventive health services not covered by Medicare, subject to a \$120 maximum annual benefit (NAIC Model Section 8.C.(9)).

Sellers who are not issuers are accordingly on notice, through the publication of this list, that the criminal and civil penalties applicable for violations of the provisions of sections 1882(d)(3)(A), 1882(p)(8), and 1882(p)(9) of the Act may be applied to them as well as to issuers.

Section 1882(d)(3)(A) prohibits a person from issuing or selling a health insurance policy (other than an employer group health plan) to a Medicare beneficiary if the person has knowledge that the policy duplicates Medicare, Medicaid, or other health benefits to which the beneficiary is entitled (other than benefits mandated

under a State or Federal law, e.g., workers' compensation or Veterans' benefits). If a seller (who is not the issuer of a policy) obtains a written statement from the beneficiary, on a form prescribed in the NAIC Standards, that lists the beneficiary's other health insurance and indicates on its face that the sale of the new policy will not duplicate other health benefits to which the beneficiary is entitled, the seller will not be considered to violate these provisions. Violations of section 1882(d)(3)(A) are subject to criminal penalties of up to \$250,000 in fines and five years imprisonment, and civil penalties of up to \$25,000 for issuers and up to \$15,000 for sellers who are not issuers.

Section 1882(p)(8) of the Act provides that any person who sells or issues a Medicare supplemental policy that does not conform to the standardization requirements after the effective date of the revised standards in the State is subject to a civil penalty of up to \$25,000 (for issuers) or \$15,000 (for sellers who are not issuers). Section 1882(p)(9) of the Act provides these same civil penalties for selling a Medicare supplemental policy without first making a "core" package of benefits available to the beneficiary and giving the beneficiary an outline of coverage on a form prescribed in the NAIC Standards.

#### IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of

small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice includes information concerning insurance policies and health benefit plans that supplement the Medicare program's coverage.

The NAIC developed a revision of its Model Regulation and officially adopted the model on July 30, 1991. It includes a list and description of the ten standardized Medigap benefits packages that may be issued in a State when the revised standards become effective. This notice fulfills the requirements in sections 1882(d)(3)(A) and 1882(p)(10) of the Act, which require the publication of this list before the amended provisions of section 1882(d)(3), 1882(p)(8) or 1882(p)(9) may be applied to sellers who are not issuers.

The cost of this notice does not exceed \$100 million. Therefore, we are not required to prepare a regulatory impact analysis pursuant to E.O. 12291.

Further, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

**Authority:** Sections 1882(d)(3)(A), (p)(1), (p)(8), (p)(9), and (p)(10) of the Social Security Act (42 U.S.C. 1395ss(d)(3)(A), (p)(1), (p)(8), (p)(9), and (p)(10)) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 9, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

#### Medicare Supplement Insurance Minimum Standards Model Act

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### Section 1. Definitions

#### A. "Applicant" means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Certificate" means, for the purposes of this Act, any certificate delivered or issued for delivery in this State under a group Medicare supplement policy.

C. "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

D. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.

**Drafting Note:** It is intended that nonprofit hospital and medical service associations be subject to this model act. In those states where such associations are prohibited from issuing subscriber contracts that include all of the benefits required by section 3 of this Act, they shall include so much of those benefits as are permitted and they shall be issued in conjunction with another contract including at least the remainder of the minimum benefits required. In such event, the combination of contracts will be considered to have been issued in compliance with section 3 of this Act.

E. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

F. "Medicare Supplement Policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act (42 U.S.C. 1395 et seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

G. "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

### Section 2. Applicability and Scope

A. Except as otherwise specifically provided in Section 4, this Act shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof, and

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this State.

B. This Act shall not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

C. The provisions of this Act are not intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons which policies are not marketed or held to be Medicare supplement policies or benefit plans.

### Section 3. Standards for Policy Provisions and Authority to Promulgate Regulations

A. No Medicare supplement policy or certificate in force in the State shall contain benefits that duplicate benefits provided by Medicare.

B. Notwithstanding any other provision of law of this State, a Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

C. The commissioner shall adopt reasonable regulations to establish specific standards for policy provisions of Medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with applicable laws of this State, including Sections [insert the applicable statutory reference, if any, to the NAIC Uniform Accident and Sickness Policy Provision Law]. No requirement of the Insurance Code relating to minimum required policy benefits, other than the minimum standards contained in this Act, shall apply to Medicare supplement policies and certificates. The standards may cover, but not be limited to:

**Editor's Note:** Wherever the term "commissioner" appears, the title of the chief

insurance regulatory official of the state should be inserted.

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage;
- (4) Probationary periods;
- (5) Benefit limitations, exceptions and reductions;
- (6) Elimination periods;
- (7) Requirements for replacement;
- (8) Recurrent conditions; and
- (9) Definitions of terms.

D. The commissioner shall adopt reasonable regulations to establish minimum standards for benefits, claims payment, marketing practices and compensation arrangements and reporting practices, for Medicare supplement policies and certificates.

E. The commissioner may adopt from time to time, such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

- (1) Requiring refunds or credit if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums and loss ratio information of issuers of Medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;
- (5) Establishing a policy for holding public hearing prior to approval of premium increases; and
- (6) Establishing standards for Medicare Select policies and certificates.

F. The commissioner may adopt reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate.

**Drafting Note:** Each state should examine its statutory authority to promulgate regulations and revise this section accordingly so that sufficient rulemaking authority is present and that unnecessary duplication of unfair practice provisions does not occur.

### Section 4. Loss Ratio standards

Medicare supplement policies shall return to policyholders benefits which



are reasonable in relation to the premium charged. The commissioner shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices.

#### Section 5. Disclosure Standards

A. In order to provide for full and fair disclosure in the sale of Medicare supplement policies, no Medicare, supplement policy or certificate shall be delivered in this State unless an outline of coverage is delivered to the applicant at the time application is made.

B. The commissioner shall prescribe the format and content of the outline of coverage required by Subsection A. For purposes of this section, "format" means style, arrangements and overall appearance, including such items as the size, color and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the renewal provisions, including any reservation by the issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age.

(3) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

C. The commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the informational brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

D. The commissioner may adopt regulations for captions or notice

requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare by reason of age, other than:

- (1) Medicare supplement policies;
- (2) Disability income policies;
- (3) Basic, catastrophic or major medical expense policies; or
- (4) Single premium, nonrenewable policies.

E. The commissioner may adopt reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for Medicare.

#### Section 6. Notice of Free Examination

Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

#### Section 7. Filing Requirements for Advertising

Every issuer of Medicare supplement insurance policies or certificates in this State shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review or approval by the commissioner to the extent it may be required under State law.

**Drafting Note:** States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

#### Section 8. Administrative Procedures

Regulations adopted pursuant to this Act shall be subject to the provisions of [cite section of State insurance code relating to the adoption and promulgation of rules and regulations or cite the State's administrative procedures act, if applicable].

#### Section 9. Penalties

In addition to any other applicable penalties for violations of the Insurance Code, the commissioner may require

issuers violating any provision of this Act or regulations promulgated pursuant to this Act to cease marketing any Medicare supplement policy or certificate in this State which is related directly or indirectly to a violation or may require such issuer to take such actions as are necessary to comply with the provisions of this Act, or both.

#### Section 10. Separability

If any provision of this Act or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

#### Section 11. Effective Date

The Act shall be effective on [insert date].

**Note:** States should make amendments as soon as possible.

**Legislative History** (all references are to the *Proceedings of the NAIC*).

1980 Proc. II 22, 26, 588, 591, 593, 603-605 (adopted).

1981 Proc. I 47, 51, 420, 424, 446, 453-456 (amended and reprinted).

1988 Proc. I 9, 20-21, 629-630, 652-654, 665-668 (amended and reprinted).

1988 Proc. II 5, 13, 568, 601, 604, 624-626 (amended and reprinted).

1989 Proc. I 14, 813-814, 836.1-836.4 (amended at special plenary session September 1988).

1990 Proc. I 6, 27-28, 477, 574-575, 577-580 (amended and reprinted).

1992 Proc. I (amended at special plenary in July 1991).

**Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act**

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### Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

### Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under [cite appropriate section of state law providing authority for minimum benefit standards regulations or the NAIC Medicare Supplement Insurance Minimum Standards Model Act].

**Editor's Note:** Wherever the term "commissioner" appears, the title of the chief insurance regulatory official of the state should be inserted.

### Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 12, 13, and 21, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof, and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this State.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a

combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

### Section 4. Definitions

For purposes of this regulation:

A. "Applicant" means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Certificate" means any certificate delivered or issued for delivery in this State under a group Medicare supplement policy.

C. "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

D. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

E. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

F. "Medicare Supplement Policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act (42 U.S.C. Section 1395 et. seq.) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

G. "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

### Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms which conform to the requirements of this section.

A. "Accident," "Accidental Injury," or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or

similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit Period" or "Medicare Benefit Period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent Nursing Home," "Extended Care Facility," or "Skilled Nursing Facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses or insurers.

Such expenses shall not include:

- (1) Home office and overhead costs;
- (2) Advertising costs;
- (3) Commissions and other acquisition costs;
- (4) Taxes;
- (5) Capital costs;
- (6) Administrative costs; and
- (7) Claims processing costs.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of the Public Law 8997, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments of substitutes thereof," or words of similar import.

G. "Medicare Eligible Expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.



H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

#### Section 6. Policy Provisions

A. Except for permitted preexisting condition clauses as described in Section 7A(1) and Section 8A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the State shall contain benefits which duplicate benefits provided by Medicare.

#### Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to [insert effective date adopted by state]

No policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

**Drafting Note:** This section has been retained for transitional purposes. The purpose of this section is to govern all policies issued prior to the date a state makes its revisions to conform to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508). Pursuant to OBRA 1990, states are required to revise and make effective their regulatory program for Medicare supplement insurance within one year after the NAIC adopts amendments to the model act and regulation. States that require statutory changes to implement the new standards and do not have legislatures scheduled to meet in 1992 in a legislative session in which such legislation may be considered are allowed additional time in which to make revisions.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

**Drafting Note:** States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

**Drafting Note:** This provision was prepared so that premium changes can be made based upon the changes in policy that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision so as to coincide with their particular authority.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5) (a) Except as authorized by the commissioner of this State, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation.

**Drafting Note:** Group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This section is not intended to impair such obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) Offer the certificateholder such conversion opportunities as are described in Subparagraph (b); or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

**Drafting Note:** Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

#### B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;



(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [\$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

**Drafting Note:** States are reminded that effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within the provisions of Paragraph (6).

**Section 8. Benefit Standards for Policies or Certificates Issued or Delivered on or After [insert effective date adopted by state]**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after [insert effective date]. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

**Drafting Note:** States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

**Drafting Note:** This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform with their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable and

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder)

(i) Provides for continuation of the benefits contained in the group policy, or

(ii) Provides for such benefits as otherwise meets the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall

(i) Offer the certificateholder the conversion opportunity described in Section 8A(5)(c), or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

**Drafting Note:** Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7) (a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.



(b) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within ninety (90) days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.

(c) Reinstitution of such coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

**B. Standards for Basic ("Core") Benefits Common to All Benefit Plans.** Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic "core" package, but not in lieu thereof.

(1) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount of Medicare Eligible Expenses

under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

**C. Standards for Additional Benefits.** The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the differences between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar (\$250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar (\$250) calendar year deductible, to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the

United States, subject to a calendar year deductible of two hundred fifty dollars (\$250), and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) Fecal occult blood test and/or digital rectal examination;

(2) Mammogram;

(3) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(4) Pure tone (air only) hearing screening test, administered or ordered by a physician;

(5) Serum cholesterol screening (every five (5) years);

(6) Thyroid function test;

(7) Diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every ten (10) years).

(d) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide/



homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive 4 hours in a 24-hour period of services provided by a care provider is one visit.

#### (b) Coverage Requirements and Limitations

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40) per visit;

(III) One thousand six hundred dollars (\$1,600) per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

**Drafting Note:** The Omnibus Budget Reconciliation Act 1990, 42 U.S.C.—1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificateholder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

**Drafting Note:** Use of new or innovative benefits may be appropriate to add coverage or access to such benefits as prescription drugs, at-home recovery services and preventive medical care. Any such innovative benefit, however, should offer uniquely different or significantly expanded coverage.

**Drafting Note:** The NAIC discussed including inflation protection for prescription drugs, at-home recovery benefits, and preventive care benefits. However, because of the lack of an appropriate mechanism for indexing these benefits, NAIC has not included indexing at this point in time. However, NAIC is committed to evaluating the effectiveness of these benefits without inflation protection, and will revisit the issue. NAIC has determined that OBRA does not authorize NAIC to delegate the authority for indexing these benefits to a federal agency without an amendment to federal law.

#### Section 9. Standard Medicare Supplement Benefit Plans

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 8C(11) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C and list the benefits in the order shown

in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in subsection C, other designations to the extent permitted by law.

**Drafting Note:** It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The "Buyer's Guide" published jointly by the NAIC and the Health Care Financing Administration will contain a chart comparing the ten possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform "naming" system be used. Thus, if only plans "A," "B," "D," "F" and "H" (for example) are authorized in a state, these plans should retain these alphabetical designations. However, an issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9D of this regulation.

#### E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the Basic ("Core") Benefits Common to All Benefit Plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The Core Benefit (as defined in Section 8B of this regulation), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit as defined in Sections 8C(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include on the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in



Sections 8C(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, One Hundred Percent (100%) of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit plan "G" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Eighty Percent (80%) of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in Sections 8C(1), (2), (4), (8) and (10) respectively.

(8) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (6) and (8) respectively.

(9) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, One Hundred Percent (100%) of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in Sections 8C(1), (2), (5), (6), (8) and (10) respectively.

(10) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, One Hundred Percent (100%) of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively.

**Drafting Note:** A state may determine by statute or regulation which of the above

benefit plans may be sold in that state. The "core" benefit plan must be made available by all issuers. Therefore, the core benefit plan must be one of the authorized benefit plans adopted by a State. In no event, however, may a State authorize the sale of more than ten (10) standardized Medicare supplement benefit plans (that is, nine (9) plus the "core" policy) at the same time.

**Drafting Note:** The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates.

#### *Section 10. Medicare Select Policies and Certificates*

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

**Drafting Note:** This section shall be adopted by states designated by the Secretary of Health and Human Services to participate in the Medicare Select Program. Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (section 1882(t) of Title XVIII of the Social Security Act) authorized a three-year, fifteen-state program with states to be designated by the Secretary. Additional states may be authorized by future change to federal law to apply the Medicare Select Program requirements to existing preferred provider arrangements.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select Issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select Policy" or "Medicare Select Certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network Provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted Network Provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service Area" means the geographic area approved by the commissioner within which an issuer is

authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this State until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information.

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Such services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(e) In the case of covered services that are subject to restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting such providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy of certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:



(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing such changes. Such changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain such services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when

providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer

shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purposes of evaluating the Medicare Select Program.



**Section 11. Open Enrollment**

A. No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual (who is 65 years of age or older) first enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before it became effective.

**Section 12. Standards for Claims Payment**

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Public Law No. 100-203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be

certified on the Medicare supplement insurance experience reporting form.

**Section 13. Loss Ratio Standards and Refund or Credit of Premium****A. Loss Ratio Standards**

(1) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire policy for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(a) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies, or

(b) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this section and Subsection C(3) of Section 14 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

**Drafting Note:** Subsection A(3) replicates language contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508). It allows direct mail group policies sold on an individual basis to meet the minimum loss ratio required of individual business (65%) rather than that required of group business (75%). The NAIC eliminated this concept from this regulation in 1987 (I NAIC Proceeding, pp. 651, 673 (1988)). At that time, NAIC required direct mail group business to meet the same loss ratio requirement as other group business, regardless of whether the business was sold on an individual basis. The NAIC encourages states to apply the 75% loss

ratio to all group business. Although NAIC is restricted from making revisions to its models that are not in conformance with OBRA 1990, states are free to impose more stringent requirements than OBRA.

**B. Refund or Credit Calculation**

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reporting the benchmark ratio since inception (ration 1) exceeds the adjusted experience ratio since inception (ration 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by a September 30 following the experience year upon which the refund or credit is based.

**C. Annual Filing of Premium Rates**

An issuer of Medicare supplement policies and certificates issued before or after the effective date of [insert citation to state's regulation] in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratios standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.



As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this State shall file with the commissioner, in accordance with the applicable filing procedures of this State:

(1) (a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

#### D. Public Hearings

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of [insert citation to state's regulation] if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in a manner deemed appropriate by the commissioner.

**Drafting Note:** This section does not in any way restrict a commissioner's statutory authority, elsewhere granted, to approve or disapprove rates.

#### Section 14. Filing and Approval of Policies and Certificates and Premium Rates

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this State unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C. (1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type of the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purpose of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D. (1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(a) An issuer may discontinue the availability of policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt

of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this State.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E. (1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in [insert citation to Section 13 of NAIC Medicare Supplement Insurance Model Regulation].

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

#### Section 15. Permitted Compensation Arrangements

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than two



hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

**Drafting Note:** The NAIC is restricted by OBRA 1990 from eliminating the phrase "unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy." However, NAIC encourages states to remove this phrase because allowing the first-year commissions in a replacement sale is no longer prudent. A purchaser will now replace an existing policy with the core or another authorized plan based on his or her financial circumstances and his or her perceptions of what coverage is needed. It is not appropriate that a first-year commission is awarded for replacement sales in this standardized market. If this phrase is removed, the payment of first year commissions will not be allowed in any replacement sale. States will not jeopardize their approval by HCFA if they remove this language.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

#### *Section 16. Required Disclosure Provisions*

##### **A. General Rules**

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured,

exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide to such applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Buyer's

Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

**Drafting Note:** In those states where the commissioner decides to prescribe the standard form and contents of an informational brochure for persons eligible for Medicare, the foregoing language is suggested. The phrase "other than incidentally" contained in this subsection is intended to exempt policies such as those which provide accidental death benefits for travel or other accidents and where the medical expense or indemnity, if any, only accompanies such other benefits.

##### **B. Notice Requirements**

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. Such notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) Such notices shall not contain or be accompanied by any solicitation.

##### **C. Outline of Coverage Requirements for Medicare Supplement Policies**

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:



"Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: A cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer.

The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The

premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

BILLING CODE 4120-03-M



[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page:  
Benefit Plan(s) \_\_\_\_\_ [insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

**Basic Benefits:** Included in All Plans.

**Hospitalization:** Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

**Medical Expenses:** Part B coinsurance (generally 20% of Medicare-approved expenses).

**Blood:** First three pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (100%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (\$3,000 Limit)
				Preventive Care					Preventive Care

BILLING CODE 4120-03-C



**Premium Information**

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

**Disclosures**

Use this outline to compare benefits and premiums among policies.

**Read Your Policy Very Carefully**

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

**Right to Return Policy**

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

**Policy Replacement**

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

**Notice**

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "The Medicare Handbook" for more details.

**Complete Answers are Very Important**

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you

leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

BILLING CODE 4120-03-M



## PLAN A

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$0 \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$[652] (Part A deductible) \$0  \$0  \$0  All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts All but [\$81.50]/day \$0	\$0 \$0 \$0	\$0 Up to \$[81.50] a day All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN A

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0 Generally 80% \$0	\$0 Generally 20% \$0	\$100 (Part B deductible) \$0 All costs
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 \$100 (Part B deductible) \$0
<b>CLINICAL LABORATORY            SERVICES--BLOOD TESTS            FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

## PARTS A &amp; B

<b>HOME HEALTH CARE            MEDICARE APPROVED            SERVICES</b> ---Medically necessary skilled care services and medical supplies ---Durable medical equipment First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	100% \$0 80%	\$0 \$0 20%	\$0 \$100 (Part B deductible) \$0
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## PLAN B

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts  All but [\$81.50]/day \$0	\$0  \$0 \$0	\$0 Up to \$[81.50] a day All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance



## PLAN B

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  \$0	\$100 (Part B deductible)  \$0  All costs
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 \$100 (Part B deductible) \$0
<b>CLINICAL LABORATORY</b> <b>SERVICES--BLOOD TESTS</b> <b>FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

## PARTS A &amp; B

<b>HOME HEALTH CARE</b> <b>MEDICARE APPROVED</b> <b>SERVICES</b> ---Medically necessary skilled care services and medical supplies ---Durable medical equipment First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	100%  \$0  80%	\$0  \$0  20%	\$0  \$100 (Part B deductible)  \$0
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## PLAN C

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0 \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts All but [\$81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN C

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0 Generally 80% \$0	\$100 (Part B deductible) Generally 20% \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$100 (Part B deductible) 20%	\$0 \$0 \$0
<b>CLINICAL LABORATORY            SERVICES--BLOOD TESTS            FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

## PARTS A &amp; B

<b>HOME HEALTH CARE</b> <b>MEDICARE APPROVED</b> <b>SERVICES</b> ---Medically necessary skilled care services and medical supplies ---Durable medical equipment First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	100% \$0 80%	\$0 \$100 (Part B deductible) 20%	\$0 \$0 \$0
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## PLAN C (continued)

## OTHER BENEFITS - COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL -</b> NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 life- time maximum



## PLAN D

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day \$0  100% of Medicare eligible expenses \$0	\$0 \$0  \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts  All but \$[81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN D

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  \$0	\$100 (Part B deductible)  \$0  All costs
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 \$100 (Part B deductible) \$0
<b>CLINICAL LABORATORY</b> <b>SERVICES--BLOOD TESTS</b> <b>FOR DIAGNOSTIC SERVICES</b>	100%	0	\$0

(continued)



## PLAN D (continued)

## PARTS A &amp; B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> <b>MEDICARE APPROVED</b> <b>SERVICES</b>			
---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment			
First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>AT-HOME RECOVERY</b> <b>SERVICES-NOT COVERED</b> <b>BY MEDICARE</b>			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
---Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
---Calendar year maximum	\$0	\$1,600	

## OTHER BENEFITS - NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL -</b> <b>NOT COVERED BY MEDICARE</b>			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
		80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
Remainder of charges	\$0		



## PLAN E

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts  All but [\$81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0  \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN E

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (Above Medicare approved amounts)	\$0	\$0	All costs
<b>BLOOD</b> First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

## PARTS A &amp; B

<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES ---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0

(continued)



## PLAN E (continued)

## OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 life- time maximum
<b>PREVENTIVE MEDICARE CARE BENEFIT-NOT COVERED BY MEDICARE</b> Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges	\$0 \$0	\$120 \$0	\$0 All costs



## PLAN F

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts All but [\$81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN F

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (Above Medicare approved amounts)	\$0	100%	\$0
<b>BLOOD</b> First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

## PARTS A &amp; B

<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b> ---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment First \$100 of Medicare approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare approved amounts	80%	20%	\$0



## PLAN F (continued)

## OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 life- time maximum



## PLAN G

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0 \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts All but \$[81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN G

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0 Generally 80% \$0	\$0 Generally 20% 80%	\$100 (Part B deductible) \$0 20%
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 \$100 (Part B deductible) \$0
<b>CLINICAL LABORATORY            SERVICES--BLOOD TESTS            FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

(continued)



## PLAN G (continued)

## PARTS A &amp; B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment			
First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>AT-HOME RECOVERY</b> SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
---Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
---Calendar year maximum	\$0	\$1,600	

## OTHER BENEFITS - NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 life- time maximum



## PLAN H

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts  All but \$[81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0  \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN H

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	Generally 80%	Generally 20%	\$0
	\$0	\$0	All costs
<b>BLOOD</b> First 3 pints	\$0	All costs	\$0
Next \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

## PARTS A &amp; B

<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES ---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0

(continued)



## PLAN H (continued)

## OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<b>BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE</b> First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50% - \$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All costs



## PLAN I

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts  All but \$[81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0  \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance



## PLAN I

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  100%	\$100 (Part B deductible)  \$0  \$0
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 \$100 (Part B deductible) \$0
<b>CLINICAL LABORATORY</b> <b>SERVICES--BLOOD TESTS</b> <b>FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

(continued)



## PLAN I (continued)

## PARTS A &amp; B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment			
First \$100 of Medicare approved amounts*	\$0	\$0	\$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE</b>			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
---Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
---Calendar year maximum	\$0	\$1,600	

## OTHER BENEFITS - NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b>			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
		80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 life-time maximum
Remainder of charges*	\$0		



## PLAN I

## OTHER BENEFITS - NOT COVERED BY MEDICARE (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>BASIC OUTPATIENT PRE- SCRIPTION DRUGS - NOT COVERED BY MEDICARE</b>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50% - \$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All costs



## PLAN J

## MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	All but \$[652] All but \$[163] a day  All but \$[326] a day  \$0 \$0	\$[652] (Part A deductible) \$[163] a day  \$[326] a day  100% of Medicare eligible expenses \$0	\$0 \$0  \$0  \$0 All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day 101st day and after	All approved amounts All but [\$81.50]/day \$0	\$0 Up to \$[81.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance



## PLAN J

## MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$100 of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0  Generally 80%  \$0	\$100 (Part B deductible)  Generally 20%  100%	\$0  \$0  \$0
<b>BLOOD</b> First 3 pints Next \$100 of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$100 (Part B deductible)  20%	\$0 \$0 \$0
<b>CLINICAL LABORATORY</b> <b>SERVICES--BLOOD TESTS</b> <b>FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

(continued)



## PLAN J (continued)

## PARTS A &amp; B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment			
First \$100 of Medicare approved amounts*	\$0	\$100 (Part B deductible)	\$0
Remainder of Medicare approved amounts	80%	20%	\$0
<b>AT-HOME RECOVERY</b> SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
---Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
---Calendar year maximum	\$0	\$1,600	

## OTHER BENEFITS - NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL -</b> NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
		80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 life- time maximum
Remainder of charges	\$0		

(continued)



## PLAN J

## OTHER BENEFITS - NOT COVERED BY MEDICARE (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>EXTENDED OUTPATIENT PRE-SCRIPTION DRUGS - NOT COVERED BY MEDICARE</b>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$6,000 each calendar year	\$0	50% - \$3,000 calendar year maximum benefit	50%
Over \$6,000 each calendar year	\$0	\$0	All costs
<b>PREVENTIVE MEDICAL CARE BENEFIT - NOT COVERED BY MEDICARE</b>			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All costs



**Drafting Note:** The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate.

#### D. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies

Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy; or a policy issued pursuant to a contract under section 1876 or section 1833 of the Federal Social Security Act (42 U.S.C. — 1395 *et seq.*), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in Section 3.B of this regulation, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"This [Policy or Certificate] Is Not a Medicare Supplement [Policy or Contract]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

#### Section 17. Requirements for Application Forms and Replacement Coverage

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

##### [Statements]

- (1) You do not need more than one Medicare supplement policy.
- (2) If you are 65 or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
- (3) The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to

benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

(4) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning Medicaid.

##### [Questions]

To the best of your knowledge,  
(1) Do you have another Medicare supplement policy or certificate in force (including health care service contract, health maintenance organization contract)?

(a) If so, with which company?  
(2) Do you have any other health insurance policies that provide benefits which this Medicare supplement policy would duplicate?

(a) If so, with which company?  
(b) What kind of policy?  
(3) If the answer to question 1 or 2 is yes, do you intend to replace these medical or health policies with this policy [certificate]?

(4) Are you covered by Medicaid?  
B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.  
(2) List policies sold in the past five (5) years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than ten (10) point type:

#### Notice to Applicant Regarding Replacement of Medicare Supplement Insurance

[Insurance company's name and address]

Save This Notice! It May Be Important to You in The Future.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. Terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

Statement to Applicant by Issuer, Agent [Broker or Other Representative]:

I have reviewed your current medical or health insurance coverage. The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

- \_\_\_\_\_ Additional benefits.
- \_\_\_\_\_ No change in benefits, but lower premiums.
- \_\_\_\_\_ Fewer benefits and lower premiums.
- \_\_\_\_\_ Other. (please specify)

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.



3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded.

[If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of Agent, Broker or Other Representative)\*

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

#### Section 18. Filing Requirements for Advertising

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review or approval by the Commissioner to the extent it may be required under state law.

**Drafting Note:** States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

#### Section 19. Standards for Marketing

A. An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy for purposes of triggering first year commissions as authorized in Section 12 of this regulation.

**Editor's Note:** If a state deletes the replacement policy language in Section 15, the agents' compensation section, as suggested in the drafting note to that section, this Paragraph (3) should also be deleted.

(4) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following: "Notice to buyer: This policy may not cover all of your medical expenses."

(5) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(6) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or trading to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

**Drafting Note:** Remember that the Unfair Trade Practice Act in your state applies to Medicare supplement insurance policies and certificates.

#### Section 20. Appropriateness of Recommended Purchase and Excessive Insurance

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

#### Section 21. Reporting of Multiple Policies

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this State for which the issuer has in force more than one Medicare supplement policy or certificate:

- (1) Policy and certificate number, and
- (2) Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

**Editor's Note:** Appendix B contains a reporting form for compliance with this section.

#### Section 22. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

**Drafting Note:** Although NAIC is restricted from making revisions to its models that do not conform to the Omnibus Budget Reconciliation Act of 1990, states are encouraged to consider deletion of the words "for similar benefits" in Subsection A and the words "for benefits similar to those contained in the original policy or certificate" in Subsection B. States should eliminate paragraphs (1) and (2) (applicable to

\* Signature not required for direct response sales.



preexisting conditions) of the replacement notice required by Section 16E.

### Section 23. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

### Section 24. Effective Date

This regulation shall be effective on [insert date].

Legislative History (all references are to the *Proceedings of the NAIC*).

1980 Proc. II 22, 26, 588, 591, 593, 595-603 (adopted).

1981 Proc. I 47, 51, 420, 422, 424, 446-447, 470-481 (amended and reprinted).

1988 Proc. I 9, 20-21, 629-630, 652-654, 668-677 (amended and reprinted).

1988 Proc. II 5, 13, 568, 601, 604, 615-624 (amended and reprinted).

1989 Proc. I 14, 813-814, 836.4-836.26 (amended at special plenary session September 1988).

1989 Proc. I 9, 25, 703, 753-754, 757-760 (appendices amended at regular plenary session).

1990 Proc. I 6, 27-28, 477, 574-576, 580-599 (amended and reprinted).

1990 Proc. II 7, 16, 599, 656, 657 (adopted reporting form).

1992 Proc. I 12, 16-75, 1084-1085 (amended at special plenary session in July 1991).

### Appendix A

#### Medicare Supplement Refund Calculation Form for Calendar Year \_\_\_\_\_

TYPE \_\_\_\_\_  
SMSBP (w) \_\_\_\_\_  
For the State of \_\_\_\_\_  
Company Name \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_  
NAIC Company Code \_\_\_\_\_  
Address \_\_\_\_\_  
Person Completing This Exhibit \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Line

(a)  
Earned  
premium  
(x)

(b)  
In-  
curred  
claims  
(y)

1. Current Year's Experience
  - a. Total (all policy years)
  - b. Current year's issues (z)
  - c. Net (for reporting purposes = 1a - 1b).
2. Past Years' Experience (All Policy Years).
3. Total Experience (Net Current Year + Past Year's Experience).
4. Refunds Last Year (Excluding Interest)
5. Previous Since Inception (Excluding Interest)
6. Refunds Since Inception (Excluding Interest)
7. Benchmark Ratio Since Inception (See Worksheet for Ratio 1)
8. Experienced Ratio Since Inception  
[Total Actual Incurred Claims (line 3, col. b)]/  
[Total Earned Prem. (line 3, col. a) - Refunds Since Inception (line 6)] = Ratio 2
9. Life Years Exposed Since Inception  
If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

#### Medicare Supplement Refund Calculation Form for Calendar Year \_\_\_\_\_

- TYPE \_\_\_\_\_  
SMSBP (w) \_\_\_\_\_  
For the State of \_\_\_\_\_  
Company Name \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_  
NAIC Company Code \_\_\_\_\_  
Address \_\_\_\_\_  
Person Completing This Exhibit \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_
10. Tolerance Permitted (obtained from credibility table)
  11. Adjustment to Incurred Claims for Credibility Ratio 3 = Ratio 2 + Tolerance  
If Ratio 3 is more than Benchmark Ratio (Ratio (Ratio 1), a refund or credit to premium is not required.  
If Ratio 3 is less than the Benchmark Ratio, then proceed.
  12. Adjusted Incurred Claims = [Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6)] × Ratio 3 (line 11)
  13. Refund = Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line

6) - [Adjusted Incurred Claims (line 12)] / [Benchmark Ratio (Ratio 1)]

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

#### MEDICARE SUPPLEMENT CREDIBILITY TABLE

Life years exposed since inception	Tolerance (percent)
10,000.....	0.0
5,000-9,999.....	5.0
2,500-4,999.....	7.5
1,000-2,499.....	10.0
500-999.....	15.0

If less than 500, no credibility.

#### Medicare Supplement Refund Calculation Form for Calendar Year \_\_\_\_\_

TYPE \_\_\_\_\_  
SMSBP (w) \_\_\_\_\_  
For the State of \_\_\_\_\_  
Company Name \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_  
NAIC Company Code \_\_\_\_\_  
Address \_\_\_\_\_  
Person Completing This Exhibit \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan  
(x) Includes Modal Loadings and Fees Charged  
(y) Excludes Active Life Reserves  
(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".  
I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Signature \_\_\_\_\_

Name—Please Type \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

BILLING CODE 4120-03-M



REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
RATIO SINCE INCEPTION FOR GROUP POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE \_\_\_\_\_ SMSBP (p) \_\_\_\_\_  
FOR THE STATE OF \_\_\_\_\_  
Company Name \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
Address \_\_\_\_\_  
Person Completing This Exhibit \_\_\_\_\_  
Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(1 + n) / (k + m)$ :

(a): Year 1 is the current calendar year - 1  
Year 2 is the current calendar year - 2 (etc.)  
(Example: If the current year is 1991, then:  
Year 1 is 1990; Year 2 is 1989, etc.)

(b): For the calendar year on the appropriate line in  
column (a), the premium earned during that year for  
policies issued in that year.

(o): These loss ratios are not explicitly used in  
computing the benchmark loss ratios. They are the  
loss ratios, on a policy year basis, which result  
in the cumulative loss ratios displayed on this  
worksheet. They are shown here for informational  
purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit  
Plan



REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE \_\_\_\_\_ SMSBP (p) \_\_\_\_\_  
FOR THE STATE OF \_\_\_\_\_  
Company Name \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
Address \_\_\_\_\_  
Person Completing This Exhibit \_\_\_\_\_  
Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(1 + n) / (k + m)$ :

(a): Year 1 is the current calendar year - 1  
Year 2 is the current calendar year - 2 (etc.)  
(Example: If the current year is 1991, then:  
Year 1 is 1990; Year 2 is 1989, etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan



## APPENDIX B

FORM FOR REPORTING  
MEDICARE SUPPLEMENT POLICIES

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

\_\_\_\_\_  
Signature\_\_\_\_\_  
Name and Title (please type)\_\_\_\_\_  
Date



## Health Resources and Services Administration

### Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1992.

**Name:** Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines.

**Date and Time:** September 16, 1992, 3 p.m.-5 p.m.

**Place:** Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

**Purpose:** This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside and literature reports with subjects affecting the Vaccine Injury Table.

**Agenda:** This subcommittee will receive an update on the statistics from VAERS and an update on the section 313 study.

**Name:** Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines.

**Date and Time:** September 16, 1992, 3 p.m.-5 p.m.

**Place:** Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

**Purpose:** The Subcommittee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

**Agenda:** The Subcommittee will discuss and review Trust Fund finances, and status of spending for pre-1988 awards.

**Name:** Advisory Commission on Childhood Vaccines.

**Date and Time:** September 16, 1992, 9 a.m.-2:45 p.m. September 17, 1992, 9 a.m.-12 p.m.

**Place:** Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

**Purpose:** The Commission: (1) Advises the Secretary on the implementation of the

Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

**Agenda:** Agenda items for the full commission will include, but not be limited to: the routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee (NVAC), reports from the ACCV Subcommittees, and presentations from the American Academy of Pediatrics and the Department of Health and Human Services' Office of the Inspector General.

Public comment will be permitted at the respective subcommittee meetings on September 16 before they adjourn in the evening; the end of the full Commission meeting on September 16; and also before noon of the second day September 17. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10 a.m., September 16 and 17. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 7-02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Agenda items are subject to change as priorities dictate.

Dated: August 17, 1992.

Jackie E. Baum,  
Advisory Committee Management Officer,  
HRSA.

[FR Doc. 92-19998 Filed 8-20-92; 8:45 am]

BILLING CODE 4160-15-M

## National Institutes of Health

### National Cancer Institute, Meeting of the Cancer Biology-Immunology Contracts Review Committee, Subcommittees A, B, and D

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, Subcommittees A, B, and D, National Cancer Institute, National Institutes of Health, August 28, 1992, at the National Institutes of Health, Building 31 (C-Wing, Sixth Floor), Conference Room 6, Bethesda, Maryland 20892.

This meeting will be open to the public on August 28 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on August 28 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 805, Bethesda, Maryland 20892



(301/496-7575) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20095 Filed 8-20-92; 8:45 am]

BILLING CODE 4140-01-M

### National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of teleconference meetings of the National Advisory Council for Nursing Research, and its Subcommittees, August 31-September 2, 1992, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on September 2, from 2 p.m. to 3 p.m. in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland, 20892. Agenda items will include the NCNR Director's Report, NIH Strategic Planning Report; Low Birthweight Infancy Report, and other items of interest.

The Planning Subcommittee will meet in open session on August 31, in Building 31, Conference Room 5B03, from 10 a.m. to 11 a.m. to discuss long-term and strategic planning and policy issues.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92-463, the meeting of the Research Subcommittee will be closed to the public on September 1, from 2 p.m. to 3 p.m., and the meeting of the full Council on September 2, from 3 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Vicki Maurer, Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B23, Bethesda, Maryland 20892, 496-2439, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20096 Filed 8-20-92; 8:45 am]

BILLING CODE 4140-01-M

### Social Security Administration

#### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the *Federal Register* on July 31, 1992.

(Call Reports Clearance Officer on (410) 965-4149 for copies of package)

1. Benefit Formula Questionnaire—0960-0477. The information on form SSA-50 is used by the Social Security Administration to determine if a modified formula should be used to compute a claimant's benefit. This is appropriate when that claimant is first eligible after 1985 to both Social Security benefits and to a pension or annuity based on noncovered employment. The respondents are claimants who allege the above.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

2. Application for Supplemental Security Income—0960-0229. The information on form SSA-8000 is used by the Social Security Administration to determine eligibility and the amount payable in claims for Supplemental Security Income (SSI). The respondents consist of applicants for SSI.

Number of Respondents: 1,855,000.

Frequency of Response: 1.

Average Burden Per Response: 34 minutes.

Estimated Annual Burden: 1,015,167 hours.

3. Agreement to Sell Properly—0960-0127. The information on form SSA-8060 is used by the Social Security Administration when individuals who are otherwise eligible for Supplemental Security Income (SSI) payments can receive conditional SSI payments if they agree to dispose of the excess resources. The respondents are individuals and spouses with excess resources who are receiving or applying for SSI payments.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 17, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-20012 Filed 8-20-92; 8:45 am]

BILLING CODE 4190-29-M

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-92]

#### Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24,



1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-827-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-1191; Corps of Engineers: Bob Swieconeck, Headquarters, Army Corps of Engineers, Attn: CERE-MM, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St., SW., room 10319, Washington, DC 20590; (202) 366-4240; HHS: Judy Breitman, Chief, Real Property Branch, Dept. of HHS, Div. of Health Facilities Planning, rm. 17A10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265; (These are not toll-free numbers).

Dated: August 14, 1992.

Randall H. Erben,

Acting Assistant Secretary.

Title V, Federal Surplus Property Program  
Federal Register Report for 08/21/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43

Millers Ferry Lock and Dam

Route 1, Box 102

Camden Co: Wilcox AL 36726-

Landholding Agency: COE

Property Number: 319011549

Status: Unutilized

Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-22

Selden Lock and Dam

Route 1

Sawyer Co: Hale AL 36776-

Landholding Agency: COE

Property Number: 319011551

Status: Unutilized

Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-21

Selden Lock and Dam

Route 1

Sawyer Co: Hale AL 36776-

Landholding Agency: COE

Property Number: 319011552

Status: Unutilized

Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-23

Selden Lock and Dam

Route 1

Sawyer Co: Hale AL 36776-

Landholding Agency: COE

Property Number: 319011553

Status: Unutilized

Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-24

Selden Lock and Dam

Route 1

Sawyer Co: Hale AL 36776-

Landholding Agency: COE

Property Number: 319011554

Status: Unutilized

Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-15

Coffeeville Lock and Dam

Star Route Box 77

Blandon Springs Co: Choctaw AL 36919-

Landholding Agency: COE

Property Number: 319011556

Status: Unutilized

Comment: 1547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

California

Santa Fe Flood Control Basin

Irwindale Co: Los Angeles CA 91708-

Landholding Agency: COE

Property Number: 319011298

Status: Unutilized

Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Florida

Bldg. CN-3

1651 S. Franklin Lock Road

Alva Co: Lee FL 33920-

Landholding Agency: COE

Property Number: 319130006

Status: Unutilized

Comment: 1500 sq. ft., 1 story concrete block residence, off-site use only.

Bldg. CN-43



Port Mayaca Lock and Spillway  
Okeechobee Waterway  
Port Mayaca Co: Martin FL 33438-  
Location: Located approx. 9 mi n/o Canal Pt.  
at the intersection of US 441 and SR 76  
Landholding Agency: COE  
Property Number: 319210004  
Status: Unutilized  
Comment: 1700 sq. ft., 1 story concrete block/  
stucco structure, possible asbestos, off-site  
use only.

## Idaho

Bldg.  
Albeni Falls Dam  
U.S. Highway 2, Priest River  
Bonner Co: Bonner ID 83856-  
Location: 3½ miles west of Priest River  
Landholding Agency: COE  
Property Number: 319110028  
Status: Unutilized  
Comment: 2989 sq. ft.; 3 story log construction  
with wood frame; off-site removal only;  
needs rehab.

## Indiana

Bldg. 01, Monroe Lake  
Monroe Cty. Rd. 37 North to Monroe Dam Rd.  
Bloomington Co: Monroe IN 47401-8772  
Landholding Agency: COE  
Property Number: 319140002  
Status: Unutilized  
Comment: 1312 sq. ft., 1 story brick residence,  
off-site use only.

Bldg. 02, Monroe Lake  
Monroe Cty. Rd. 37 North to Monroe Dam Rd.  
Bloomington Co: Monroe IN 47401-8772  
Landholding Agency: COE  
Property Number: 319140003  
Status: Unutilized  
Comment: 1312 sq. ft., 1 story brick residence,  
off-site use only.

## Kentucky

Green River Lock & Dam #3  
Rochester Co: Butler KY 42273-  
Location: SR 70 west from Morgantown, KY.,  
approximately 7 miles to site.  
Landholding Agency: COE  
Property Number: 319010022  
Status: Unutilized  
Comment: 980 sq. ft.; 2 story wood frame; two  
story residence; potential utilities; needs  
major rehab.

## New Mexico

Bldg. 814, Kirtland AFB  
Adjacent to Sandia Natl. Labs  
Albuquerque Co: Bernalillo NM 87185-  
Landholding Agency: Energy  
Property Number: 419220002  
Status: Unutilized  
Comment: 6900 sq. ft., one story wood frame,  
needs rehab, presence of asbestos, off-site  
use only, most recent use—office, secured  
area w/alternate access.

Bldg. 815, Kirtland AFB  
Adjacent to Sandia Natl. Labs  
Albuquerque Co: Bernalillo NM 87185-  
Landholding Agency: Energy  
Property Number: 419220003  
Status: Unutilized  
Comment: 3440 sq. ft., one story wood frame,  
needs rehab, presence of asbestos, off-site  
use only, most recent use—auditorium,  
secured area w/alternate access.

## North Carolina

Dwelling 1  
USCG Coinjock Housing  
Coinjock Co: Currituck NC 27923-  
Landholding Agency: DOT  
Property Number: 879120083  
Status: Unutilized  
Comment: one story wood residence, periodic  
flooding in garage and utility room occurs  
in heavy rainfall.

Dwelling 2  
USCG Coinjock Housing  
Coinjock Co: Currituck NC 27923-  
Landholding Agency: DOT  
Property Number: 879120084  
Status: Unutilized  
Comment: one story wood residence, periodic  
flooding in garage and utility room occurs  
in heavy rainfall.

Dwelling 3  
USCG Coinjock Housing  
Coinjock Co: Currituck NC 27923-  
Landholding Agency: DOT  
Property Number: 879120085  
Status: Unutilized  
Comment: one story wood residence, periodic  
flooding in garage and utility room occurs  
in heavy rainfall.

## Ohio

Barker Historic House  
Willow Island Locks and Dam  
Newport Co: Washington OH 45768-9801  
Location: Located at lock site, downstream of  
lock and dam structure  
Landholding Agency: COE  
Property Number: 319120018  
Status: Unutilized  
Comment: 1600 sq. ft. bldg. with ½ acre of  
land, 2 story brick frame, needs rehab, on  
Nat'l Register of Historic Places, no utilities,  
off-site use only.

## Oregon

Former Resource Area Hdqts.  
6615 Officers Row  
Tillamook Co: Tillamook OR 97141-  
Landholding Agency: CSA  
Property Number: 549220001  
Status: Surplus  
Comment: 4400 sq. ft., 3-story wood bldg.,  
needs repair, on 5.51 acres.  
GSA Number: 9-I-OR-515F

126 Duplexes  
Kingsley Field Family Housing Annex  
Midland Road  
Klamath Falls Co: Klamath OR 97034-  
Landholding Agency: CSA  
Property Number: 549220014  
Status: Surplus  
Base closure; Number of Units: 126  
Comment: 1064 to 2204 sq. ft., wood frame, 1  
story, 2 & 3 bedrooms, needs rehab, sewer  
treatment plant unable to accommodate  
fully operational fac., possible asbestos, 38  
acres of land.  
GSA Number: 9-D-OR-4341

38 Single Family Residences  
Kingsley Field Family Housing Annex  
Midland Road  
Klamath Falls Co: Klamath OR 97034-  
Landholding Agency: CSA  
Property Number: 549220015  
Status: Surplus  
Base closure; Number of Units: 38

Comment: 1064 to 2204 sq. ft., wood frame, 1  
story, 3 & 4 bedrooms, needs rehab, sewer  
treatment plant unable to accommodate  
fully operational fac., possible asbestos, 38  
acres of land.

GSA Number: 9-D-OR-4341

10 Miscellaneous Buildings  
Kingsley Field Family Housing Annex  
Midland Road  
Klamath Falls Co: Klamath OR 97034-  
Landholding Agency: CSA  
Property Number: 549220016  
Status: Surplus  
Base closure; Number of Units: 10  
Comment: 1 story, most recent use—fire  
station, storage sheds, quonset hut, well  
housings.

GSA Number: 9-D-OR-4341

## Pennsylvania

Mahoning Creek Reservoir  
New Bethlehem Co: Armstrong PA 16242-  
Landholding Agency: COE  
Property Number: 319210008  
Status: Unutilized  
Comment: 1015 sq. ft., 2 story brick residence,  
off-site use only.

## South Carolina

Bldg. 1  
J.S. Thurmond Dam and Reservoir  
Clarks Hill CO: McCormick SC 29821-  
Location: ½ mile east of Resource Managers  
Office.  
Landholding Agency: COE  
Property Number: 319011544  
Status: Excess  
Comment: 1900 sq. ft.; 1 story masonry frame;  
possible asbestos; most recent use—  
storage.

Bldg. 2  
J.S. Thurmond Dam and Reservoir  
Clarks Hill CO: McCormick SC 29821-  
Location: ½ mile east of Resource Managers  
Office.  
Landholding Agency: COE  
Property Number: 319011545  
Status: Excess  
Comment: 1900 sq. ft.; 1 story masonry frame;  
possible asbestos; most recent use—  
storage.

Bldg. 3  
J.S. Thurmond Dam and Reservoir  
Clarks Hill CO: McCormick SC 29821-  
Location: ½ mile east of Resource Managers  
Office.  
Landholding Agency: COE  
Property Number: 319011546  
Status: Excess  
Comment: 1900 sq. ft.; 1 story masonry frame;  
possible asbestos; most recent use—  
storage.

Bldg. 4  
J.S. Thurmond Dam and Reservoir  
Clarks Hill CO: McCormick SC 29821-  
Location: ½ mile east of Resource Managers  
Office.  
Landholding Agency: COE  
Property Number: 319011547  
Status: Excess  
Comment: 1900 sq. ft.; 1 story masonry frame;  
possible asbestos; most recent use—  
storage.

Bldg. 5  
J.S. Thurmond Dam and Reservoir



Clarks Hill CO: McCormick SC 29821-  
Location: 1/2 mile east of Resource Managers  
Office.  
Landholding Agency: COE  
Property Number: 319011548  
Status: Excess  
Comment: 1900 sq. ft.; 1 story masonry frame;  
possible asbestos; most recent use—  
storage.

#### Virginia

Housing  
Rt. 637—Gwynnville Road  
Gwynn Island Co: Mathews VA 23066-  
Landholding Agency: DOT  
Property Number: 879120082  
Status: Unutilized  
Comment: 929 sq. ft., one story residence.

#### Wisconsin

Former Lockmaster's Dwelling  
Cedar Locks  
4527 East Wisconsin Road  
Appleton Co: Outagamie WI 54911-  
Landholding Agency: COE  
Property Number: 319011524  
Status: Unutilized  
Comment: 1224 sq. ft.; 2 story brick/wood  
frame residence; needs rehab; secured area  
with alternate access.

Former Lockmaster's Dwelling  
Appleton 4th Lock  
905 South Lowe Street  
Appleton Co: Outagamie WI 54911-  
Landholding Agency: COE  
Property Number: 319011525  
Status: Unutilized  
Comment: 908 sq. ft.; 2 story wood frame  
residence; needs rehab.

Former Lockmaster's Dwelling  
Kaukauna 1st Lock  
301 Canal Street  
Kaukauna Co: Outagamie WI 54131-  
Landholding Agency: COE  
Property Number: 319011527  
Status: Unutilized  
Comment: 1290 sq. ft.; 2 story wood frame  
residence; needs rehab; secured area with  
alternate access.

Former Lockmaster's Dwelling  
Appleton 1st Lock  
905 South Oneida Street  
Appleton Co: Outagamie WI 54911-  
Landholding Agency: COE  
Property Number: 31911531  
Status: Unutilized  
Comment: 1300 sq. ft.; potential utilities; 2  
story wood frame residence; needs rehab;  
secured area with alternate access.

Former Lockmaster's Dwelling  
Rapid Croche Lock  
Lock Road  
Wrightstown Co: Outagamie WI 54180-  
Location: 3 miles southwest of intersection  
State Highway 96 and Canal Road.  
Landholding Agency: COE  
Property Number: 319011533  
Status: Unutilized  
Comment: 1952 sq. ft.; 2 story wood frame  
residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling  
Little Kaukauna Lock  
Little Kaukauna  
Lawrence Co: Brown WI 54130-

Location: 2 miles southeasterly from  
intersection of Lost Dauphin Road (County  
Trunk Highway "D") and River Street.  
Landholding Agency: COE  
Property Number: 319011535  
Status: Unutilized  
Comment: 1224 sq. ft.; 2 story brick/wood  
frame residence; needs rehab.

Former Lockmaster's Dwelling  
Little Chute, 2nd Lock  
214 Mill Street  
Little Chute Co: Outagamie WI 54140-  
Landholding Agency: COE  
Property Number: 319011536  
Status: Unutilized  
Comment: 1224 sq. ft.; 2 story brick/wood  
frame residence; potential utilities; needs  
rehab; secured area with alternate access.

#### Wyoming

Glendale Microwave Bldg.  
Section 1  
Cody Co: Park WY 82414-  
Landholding Agency: Energy  
Property Number: 419220001  
Status: Excess  
Comment: 223 sq. ft., metal frame,  
communication equipment bldg., limited  
utilities, off-site removal only.

#### LAND (by State)

##### Arkansas

Parcel 01  
DeGray Lake  
Section 12  
Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010071  
Status: Unutilized  
Comment: 77.6 acres.

Parcel 02  
DeGray Lake  
Section 13  
Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010072  
Status: Unutilized  
Comment: 198.5 acres.

Parcel 03  
DeGray Lake  
Section 18  
Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010073  
Status: Unutilized  
Comment: 50.46 acres.

Parcel 04  
DeGray Lake  
Section 24, 25, 30 and 31  
Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010074  
Status: Unutilized  
Comment: 236.37 acres.

Parcel 05  
DeGray Lake  
Section 16  
Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010075  
Status: Unutilized  
Comment: 187.30 acres.

Parcel 06  
DeGray Lake  
Section 13

Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010076  
Status: Unutilized  
Comment: 13.0 acres.

Parcel 07  
DeGray Lake  
Section 34  
Arkadelphia Co: Hot Spring AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010077  
Status: Unutilized  
Comment: 0.27 acres.

Parcel 08  
DeGray Lake  
Section 13  
Arkadelphia Co: Clark AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010078  
Status: Unutilized  
Comment: 14.6 acres.

Parcel 09  
DeGray Lake  
Section 12  
Arkadelphia Co: Hot Spring AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010079  
Status: Unutilized  
Comment: 6.60 acres.

Parcel 10  
DeGray Lake  
Section 12  
Arkadelphia Co: Hot Spring AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010080  
Status: Unutilized  
Comment: 4.5 acres.

Parcel 11  
DeGray Lake  
Section 19  
Arkadelphia Co: Hot Spring AR 71923-9361  
Landholding Agency: COE  
Property Number: 319010081  
Status: Unutilized  
Comment: 19.50 acres.

Lake Greeson  
Section 7, 8 and 18  
Murfreesboro Co: Pike AR 71958-9720  
Landholding Agency: COE  
Property Number: 319010083  
Status: Unutilized  
Comment: 46 acres.

California  
Lake Mendocino  
1160 Lake Mendocino Drive  
Ukiah Co: Mendocino CA 95482-9404  
Landholding Agency: COE  
Property Number: 319011015  
Status: Unutilized  
Comment: 20 acres; steep, dense brush;  
potential utilities.

New Hogan Lake  
2713 Hogan Dam Road  
Valley Springs Co: Calaveras CA 95252-0128  
Landholding Agency: COE  
Property Number: 319011017  
Status: Unutilized  
Comment: 3.08 acres; potential utilities; brush  
covered.

Receiver Site  
Delano Relay Station  
Route 1, Box 1350  
Delano Co: Tulare CA 93215-



Location: 5 miles west of Pixley, 17 miles north of Delano.  
 Landholding Agency: GSA  
 Property Number: 549010044  
 Status: Excess  
 Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities.  
 GSA Number: 9-2-CA-1308  
 Colorado  
 Portion/Curecanti Substation  
 Cimarron Co: Montrose CO 81220-  
 Location: 2 miles east of Cimarron on Highway 50  
 Landholding Agency: GSA  
 Property Number: 419030009  
 Status: Excess  
 Comment: 36.39 acres, easement restrictions.  
 GSA Number: 7-B-CO-624  
 Railroad Spur and Right-of-Way  
 Denver Federal Center  
 Lakewood Co: Jefferson CO 80215-  
 Landholding Agency: GSA  
 Property Number: 549120007  
 Status: Excess  
 Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions.  
 GSA Number: 7-G-CO-441-Q  
 Lamar Communications Annex  
 12 miles south of Lamar on Hwys. 287/385  
 Lamar Co: Prowers CO 81052-  
 Landholding Agency: GSA  
 Property Number: 549220010  
 Status: Excess  
 Comment: 3.67 acres fee land/36.20 acres easement, 3 bldgs. on property—2332 sq. ft. communications, 336 sq. ft. generator 96 sq. ft. storage, concrete block.  
 GSA Number: 7-D-CO-625  
 Kansas  
 Parcel 1  
 El Dorado Lake  
 Section 13, 24, and 18  
 (See County) Co: Butler KS  
 Landholding Agency: COE  
 Property Number: 319010064  
 Status: Unutilized  
 Comment: 61 acres; most recent use—recreation.  
 Portion of VA Hospital Reserv.  
 2111 Southwest Randolph Street  
 Topeka Co: Shawnee KS 66603-  
 Landholding Agency: GSA  
 Property Number: 549220006  
 Status: Excess  
 Comment: 0.806 acre, utility easements, most recent use—recreation.  
 GSA Number: 7-GR-KS-419-I  
 Kentucky  
 Tract 2625  
 Barkley Lake, Kentucky, and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: Adjoining the village of Rockcastle.  
 Landholding Agency: COE  
 Property Number: 319010025  
 Status: Excess  
 Comment: 2.57 acres; rolling and wooded.  
 Tract 2709-10 and 2710-2  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 2½ miles in a southerly direction from the village of Rockcastle.

Landholding Agency: COE  
 Property Number: 319010026  
 Status: Excess  
 Comment: 2.00 acres; steep and wooded.  
 Tract 2708-1 and 2709-1  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 2½ miles in a southerly direction from the village of Rockcastle.  
 Landholding Agency: COE  
 Property Number: 319010027  
 Status: Excess  
 Comment: 3.59 acres; rolling and wooded; no utilities.  
 Tract 2800  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 4½ miles in a southeasterly direction from the village of Rockcastle.  
 Landholding Agency: COE  
 Property Number: 319010028  
 Status: Excess  
 Comment: 5.44 acres; steep and wooded.  
 Tract 2915  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 6½ miles west of Cadiz.  
 Landholding Agency: COE  
 Property Number: 319010029  
 Status: Excess  
 Comment: 5.76 acres; steep and wooded; no utilities.  
 Tract 2702  
 Barkley Lake, Kentucky and Tennessee  
 Cadiz Co: Trigg KY 42211-  
 Location: 1 miles in a southerly direction from the village of Rockcastle.  
 Landholding Agency: COE  
 Property Number: 319010031  
 Status: Excess  
 Comment: 4.90 acres; wooded; no utilities  
 Tract 4318  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.  
 Landholding Agency: COE  
 Property Number: 319010032  
 Status: Excess  
 Comment: 8.24 acres; steep and wooded.  
 Tract 4502  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 3½ miles in a southerly direction from Canton, KY.  
 Landholding Agency: COE  
 Property Number: 319010033  
 Status: Excess  
 Comment: 4.26 acres; steep and wooded.  
 Tract 4611  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 5 miles south of Canton, KY.  
 Landholding Agency: COE  
 Property Number: 319010034  
 Status: Excess  
 Comment: 10.51 acres; steep and wooded; no utilities.  
 Tract 4619  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 4½ miles south from Canton, KY.  
 Landholding Agency: COE

Property Number: 319010035  
 Status: Excess  
 Comment: 2.02 acres; steep and wooded; no utilities.  
 Tract 4817  
 Barkley Lake, Kentucky and Tennessee  
 Canton Co: Trigg KY 42212-  
 Location: 6½ miles south of Canton KY.  
 Landholding Agency: COE  
 Property Number: 319010036  
 Status: Excess  
 Comment: 1.75 acres; wooded.  
 Tract 1217  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: On the north side of the Illinois Central Railroad.  
 Landholding Agency: COE  
 Property Number: 319010042  
 Status: Excess  
 Comment: 5.80 acres; steep and wooded.  
 Tract 1906  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 4 miles east of Eddyville, KY.  
 Landholding Agency: COE  
 Property Number: 319010044  
 Status: Excess  
 Comment: 25.86 acres; rolling steep and partially wooded; no utilities.  
 Tract 1907  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42038-  
 Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.  
 Landholding Agency: COE  
 Property Number: 319010045  
 Status: Excess  
 Comment: 8.71 acres; rolling steep and wooded; no utilities.  
 Tract 2001 #1  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 4½ miles east of Eddyville, KY.  
 Landholding Agency: COE  
 Property Number: 319010046  
 Status: Excess  
 Comment: 47.42 acres; steep and wooded; no utilities.  
 Tract 2001 #2  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 4½ miles east of Eddyville, KY.  
 Landholding Agency: COE  
 Property Number: 319010047  
 Status: Excess  
 Comment: 8.64 acres; steep and wooded; no utilities.  
 Tract 2005  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-  
 Location: Approximately 5½ miles east of Eddyville, KY.  
 Landholding Agency: COE  
 Property Number: 319010048  
 Status: Excess  
 Comment: 4.62 acres; steep and wooded; no utilities.  
 Tract 2307  
 Barkley Lake, Kentucky and Tennessee  
 Eddyville Co: Lyon KY 42030-



Location: Approximately 7½ miles southeasterly of Eddyville, KY.

Landholding Agency: COE

Property Number: 319010049

Status: Excess

Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403

Barkley Lake, Kentucky and Tennessee

Eddyville Co: Lyon KY 42030-

Location: 7 miles southeasterly of Eddyville, KY.

Landholding Agency: COE

Property Number: 319010050

Status: Excess

Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504

Barkley Lake, Kentucky and Tennessee

Eddyville Co: Lyon KY 42030-

Location: 9 miles southeasterly of Eddyville, KY.

Landholding Agency: COE

Property Number: 319010051

Status: Excess

Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.

Landholding Agency: COE

Property Number: 319010052

Status: Excess

Comment: 5.5 acres; wooded; no utilities.

Tract 215

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: 5 miles southwest of Kuttawa.

Landholding Agency: COE

Property Number: 319010053

Status: Excess

Comment: 1.40 acres; wooded; no utilities.

Tract 241

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.

Landholding Agency: COE

Property Number: 319010054

Status: Excess

Comment: 1.26 acres; steep wooded; no utilities.

Tracts 306, 311, 315 and 325

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek.

Landholding Agency: COE

Property Number: 319010055

Status: Excess

Comment: 38.77 acres; steep wooded; no utilities.

Tracts 2305, 2306, and 2400-1

Barkley Lake, Kentucky and Tennessee

Eddyville Co: Lyon KY 42030-

Location: 6½ miles southeasterly of Eddyville, KY.

Landholding Agency: COE

Property Number: 319010056

Status: Excess

Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500-2

Barkley Lake, Kentucky and Tennessee

Kuttawa Co: Lyon KY 42055-

Location: Situated on the waters of Poplar Creek; approximately 1 mile southwest of Kuttawa, KY.

Landholding Agency: COE

Property Number: 319010057

Status: Excess

Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204

Barkley Lake, Kentucky and Tennessee

Linton Co: Trigg KY 42212-

Location: Village of Linton, KY state highway 1254.

Landholding Agency: COE

Property Number: 319010058

Status: Excess

Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240

Barkley Lake, Kentucky and Tennessee

Linton Co: Trigg KY 42212-

Location: 1 mile northwest of Linton, KY.

Landholding Agency: COE

Property Number: 319010059

Status: Excess

Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628

Barkley Lake, Kentucky and Tennessee

Canton Co: Trigg KY 42212-

Location: 4½ miles south from Canton, KY.

Landholding Agency: COE

Property Number: 319011621

Status: Excess

Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619-B

Barkley Lake, Kentucky and Tennessee

Canton Co: Trigg KY 42212-

Location: 4½ miles south from Canton, KY.

Landholding Agency: COE

Property Number: 319011622

Status: Excess

Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403-B

Barkley Lake, Kentucky and Tennessee

Eddyville Co: Lyon KY 42038-

Location: 7 miles southeasterly from Eddyville, KY.

Landholding Agency: COE

Property Number: 319011623

Status: Unutilized

Comment: 0.170 acres, wooded; subject to utility easements.

Tract 241-B

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.

Landholding Agency: COE

Property Number: 319011624

Status: Excess

Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.

Landholding Agency: COE

Property Number: 319011625

Status: Excess

Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215-B

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: 5 miles southwest of Kuttawa.

Landholding Agency: COE

Property Number: 319011626

Status: Excess

Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045-

Location: 5 miles southwest of Kuttawa.

Landholding Agency: COE

Property Number: 319011627

Status: Excess

Comment: 1.00 acres; wooded; subject to utility easements.

Tract N-819

Dale Hollow Lake & Dam Project

Illwill Creek, Hwy 90

Hobart Co: Clinton KY 42601-

Landholding Agency: COE

Property Number: 319140009

Status: Underutilized

Comment: 91 acres, most recent use—hunting, subject to existing easements.

Louisiana

Wallace Lake Dam and Reservoir

Shreveport Co: Caddo LA 71103-

Landholding Agency: COE

Property Number: 319011009

Status: Unutilized

Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir

Haughton Co: Caddo LA 71037-9707

Location: 35 miles Northeast of Shreveport, LA.

Landholding Agency: COE

Property Number: 319011010

Status: Unutilized

Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Parcel D

Pine River

Cross Lake Co: Crow Wing MN 56442-

Location: 3 miles from city of Cross Lake, between highways 6 and 371.

Landholding Agency: COE

Property Number: 319011038

Status: Excess

Comment: 17 acres; no utilities.

Tract 92

Sandy Lake

McGregor Co: Aitkins MN 55760-

Location: 4 miles west of highway 65, 15 miles from city of McGregor.

Landholding Agency: COE

Property Number: 319011040

Status: Excess

Comment: 4 acres; no utilities.

Tract 98

Leech Lake

Benedict Co: Hubbard MN 56641-

Location: 1 mile from city of Federal Dam, MN.

Landholding Agency: COE

Property Number: 319011041



Status: Excess  
Comment: 7.3 acres; no utilities.

## Mississippi

Parcel 7  
Grenada Lake  
Sections 22, 23, T24N  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011019  
Status: Underutilized  
Comment: 100 acres; no utilities,  
intermittently used under lease—expires  
1994.

Parcel 8  
Grenada Lake  
Section 20, T24N  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011020  
Status: Underutilized  
Comment: 20 acres; no utilities, intermittently  
used under lease—expires 1994.

Parcel 9  
Grenada Lake  
Section 20, T24N, R7E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011021  
Status: Underutilized  
Comment: 23 acres; no utilities, intermittently  
used under lease—expires 1994.

Parcel 10  
Grenada Lake  
Sections 16, 17, 18, T24N R8E  
Grenada Co: Calhoun MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011022  
Status: Underutilized  
Comment: 490 acres; no utilities,  
intermittently used under lease—expires  
1994.

Parcel 2  
Grenada Lake  
Section 20 and T23N, R5E  
Grenada Co: Grenada MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011023  
Status: Underutilized  
Comment: 60 acres; no utilities, most recent  
use—wildlife and forestry management.

Parcel 3  
Grenada Lake  
Section 4, T23N, R5E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011024  
Status: Underutilized  
Comment: 120 acres; no utilities, most recent  
use—wildlife and forestry management;  
(13.5 acres/agriculture lease).

Parcel 4  
Grenada Lake  
Section 2 and 3, T23N, R5E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011025  
Status: Underutilized  
Comment: 60 acres; no utilities, most recent  
use—wildlife and forestry management.

Parcel 5  
Grenada Lake  
Section 7, T24N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE

Property Number: 319011026  
Status: Underutilized  
Comment: 20 acres; no utilities; most recent  
use—wildlife and forestry management; (14  
acres/agriculture lease).

Parcel 6  
Grenada Lake  
Section 9, T24N, R6E  
Grenada Co: Yalobusha MS 38903-0903  
Landholding Agency: COE  
Property Number: 319011027  
Status: Underutilized  
Comment: 80 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 11  
Grenada Lake  
Sections 20, T24N, R8E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011028  
Status: Underutilized  
Comment: 30 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 12  
Grenada Lake  
Section 25, T24N, R7E  
Grenada Co: Yalobusha MS 38390-10903  
Landholding Agency: COE  
Property Number: 319011029  
Status: Underutilized  
Comment: 30 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 13  
Grenada Lake  
Section 34, T24N, R7E  
Grenada Co: Yalobusha MS 38903-0903  
Landholding Agency: COE  
Property Number: 319011030  
Status: Underutilized  
Comment: 35 acres; no utilities; most recent  
use—wildlife and forestry management; (11  
acres/agriculture lease).

Parcel 14  
Grenada Lake  
Section 3, T23N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011031  
Status: Underutilized  
Comment: 15 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 15  
Grenada Lake  
Section 4, T24N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011032  
Status: Underutilized  
Comment: 40 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 16  
Grenada Lake  
Section 9, T23N, R6E  
Grenada Co: Yalobusha MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011033  
Status: Underutilized  
Comment: 70 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 17  
Grenada Lake  
Section 17, T23N, R7E  
Grenada Co: Grenada MS 28901-0903  
Landholding Agency: COE

Property Number: 319011034  
Status: Underutilized  
Comment: 35 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 18  
Grenada Lake  
Section 22, T23N, R7E  
Grenada Co: Grenada MS 28902-0903  
Landholding Agency: COE  
Property Number: 319011035  
Status: Underutilized  
Comment: 10 acres; no utilities; most recent  
use—wildlife and forestry management.

Parcel 19  
Grenada Lake  
Section 9, T22N, R7E  
Grenada Co: Grenada MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011036  
Status: Underutilized  
Comment: 20 acres; no utilities; most recent  
use—wildlife and forestry management.

## Missouri

Harry S Truman Dam & Reservoir  
Warsaw Co: Benton MO 65355-  
Location: Triangular shaped parcel southwest  
of access road "B", part of Bledsoe Ferry  
Park Track 150.  
Landholding Agency: COE  
Property Number: 319030014  
Status: Underutilized  
Comment: 1.7 acres; potential utilities.

## Montana

0.01 acre  
Fort Peck Lake Project Co: Valley MT  
Location: Twp. 27 north, RNG 41 east, Section  
33, E/2SE/4NW/4NE/4  
Landholding Agency: COE  
Property Number: 319220002  
Status: Excess  
Comment: 0.01 acre, small triangular parcel,  
rough/steep terrain.

0.05 acre  
Fort Peck Lake Project Co: Valley MT  
Location: Twp. 27 north, RNG 41 east, Section  
33, E/2SE/4NW/4NE/4  
Landholding Agency: COE  
Property Number: 319220003  
Status: Excess  
Comment: 0.05 acre, small strip next to  
highway, steep/rough terrain.

122.60 acres  
Fort Peck Lake Project Co: McCone MT  
Location: Twp. 26 north, RNG 42 east, Section  
4, Lot 3, SW/4NE/4SE/4NW/4  
Landholding Agency: COE  
Property Number: 319220004  
Status: Excess  
Comment: 122.60 acres, rough & rugged  
terrain, grazing allotment administered by  
Bureau of Land Management.

120 acres, Fort Peck Lake Proj Co: McCone  
MT  
Location: Twp 21 north, RNG 43 east, Section  
34, N/2NE/4, Section 35, NW/4NW/4  
Landholding Agency: COE  
Property Number: 319220005  
Status: Unutilized  
Comment: 120.00 acres, rough & rugged  
terrain.

North Carolina  
USCG Station—Land



Oregon Inlet Coast Guard Station  
Rodanthe Co: Dare NC 27968-  
Landholding Agency: DOT  
Property Number: 879120087  
Status: Unutilized  
Comment: 10 acres, potential utilities.  
Ohio

Hannibal Locks and Dam  
Ohio River  
P.O. Box 8  
Hannibal Co: Monroe OH 43931-0008  
Location: Adjacent to the new Martinsville  
Bridge.  
Landholding Agency: COE  
Property Number: 319010015  
Status: Underutilized  
Comment: 22 acres; river bank.

Oklahoma  
Parcel No. 18  
Fort Gibson Lake  
Section 12  
Wagoner Co. Co: Wagoner OK  
Landholding Agency: GSA  
Property Number: 219013808  
Status: Excess  
Comment: 8.77 acres; subject to grazing lease;  
most recent use—recreation.  
GSA Number: 7-D-OK-0442E-0004

Parcel 7  
Fort Gibson Lake  
Section 8 Co: Cherokee OK 74434  
Landholding Agency: GSA  
Property Number: 319010869  
Status: Excess  
Comment: 16.31 acres; potential utilities; most  
recent use—recreational and development.  
GSA Number: 7-D-OK-0442E-0001

Parcel 14  
Fort Gibson Lake  
Section 20 Co: Cherokee OK 74434  
Landholding Agency: GSA  
Property Number: 319010870  
Status: Excess  
Comment: 52.09 acres; potential utilities;  
subject to haying/grazing leases; most  
recent use—recreational.  
GSA Number: 7-D-OK-0442E-0002

Parcel 15  
Fort Gibson Lake  
Section 22 Co: Cherokee OK 74434  
Landholding Agency: GSA  
Property Number: 319010871  
Status: Excess  
Comment: 7.51 acres; potential utilities; most  
recent use—recreational.  
GSA Number: 7-D-OK-0442E-0003

Parcel 28  
Fort Gibson Lake  
Section 35 Co: Mayes OK 74434  
Landholding Agency: GSA  
Property Number: 319010877  
Status: Excess  
Comment: 36.59 acres; potential utilities; most  
recent use—recreational.  
GSA Number: 7-D-OK-0442E-0005

Parcel 75  
Fort Gibson Lake  
Section 16 Co: Mayes OK 74434  
Landholding Agency: GSA  
Property Number: 319010887  
Status: Excess  
Comment: 45 acres; potential utilities; subject  
to haying lease and flowage easement;  
most recent use—recreational.

GSA Number: 7-D-OK-0442E-0009  
Parcel 88  
Fort Gibson Lake  
Section 7 Co: Wagoner OK 74434  
Landholding Agency: GSA  
Property Number: 319010899  
Status: Excess  
Comment: 14 acres; potential utilities; subject  
to grazing lease; most recent use—  
recreational.

GSA Number: 7-D-OK-0442E-0010  
Parcel 89  
Fort Gibson Lake  
Section 7 Co: Wagoner OK 74434  
Landholding Agency: GSA  
Property Number: 319010900  
Status: Excess  
Comment: 16 acres; potential utilities; subject  
to grazing lease and flowage easement;  
most recent use—recreational.

GSA Number: 7-D-OK-0442E-011  
Parcel 95  
Fort Gibson Lake  
Section 33 Co: Wagoner OK 74434  
Landholding Agency: GSA  
Property Number: 319010906  
Status: Excess  
Comment: 8 acres; potential utilities; most  
recent use—recreational.  
GSA Number: 7-D-OK-0442E-0012

Pine Creek Lake  
Section 27  
(See County) Co: McCurtain OK  
Landholding Agency: COE  
Property Number: 319010923  
Status: Unutilized  
Comment: 3 acres; no utilities; subject to right  
of way for Oklahoma State Highway 3.

Parcel No. 43  
Fort Gibson Lake  
Section 11  
Co: Mayes OK 74434  
Landholding Agency: GSA  
Property Number: 319011371  
Status: Excess  
Comment: 125 acres; potential utilities;  
portion subject to grazing lease and  
flowage easements.  
GSA Number: 7-D-OK-0442E-0006

Parcel No. 49  
Fort Gibson Lake  
Section 15  
Co: Mayes OK 74434  
Landholding Agency: GSA  
Property Number: 319011377  
Status: Excess  
Comment: 26.94 acres; potential utilities;  
portion subject to grazing lease and  
flowage easements.

GSA Number: 7-D-OK-0442E-0007  
Parcel No. 61  
Fort Gibson Lake  
Section 13  
Co: Mayes OK 74434  
Landholding Agency: GSA  
Property Number: 319011389  
Status: Excess  
Comment: 54 acres; potential utilities; subject  
to flowage easement; most recent use—  
recreation.  
GSA Number: 7-D-OK-0442E-0008

Parcel No. 99  
Fort Gibson Lake  
Section 21

Co: Wagoner OK 74434  
Landholding Agency: GSA  
Property Number: 319011400  
Status: Excess  
Comment: 5 acres; small creek on land; most  
recent use—recreation.  
GSA Number: 7-D-OK-0442E-0013

Parcel No. 102  
Fort Gibson Lake  
Section 33  
Co: Wagoner OK 74434  
Landholding Agency: GSA  
Property Number: 319011403  
Status: Excess  
Comment: 7 acres; subject to grazing lease;  
most recent use—recreation.  
GSA Number: 7-D-OK-0442E-0014

Parcel No. 105  
Fort Gibson Lake  
Sections 14, 22 and 23  
Co: Wagoner OK 74434  
Landholding Agency: GSA  
Property Number: 319011406  
Status: Excess  
Comment: 375 acres; portion is  
environmentally protected; most recent  
use—recreation.  
GSA Number: 7-D-OK-0442E-0015

Oregon  
Tonque Point Job Corps Center (Portion of)  
Astoria Co: Clatsop OR 97103-  
Location: North of Highway 30; on the west  
by city of Astoria's sewage treatment plant.  
Landholding Agency: GSA  
Property Number: 549010027  
Status: Excess  
Comment: 18.17 acres, land slopes, some soil  
erosion, potential utilities, no vehicular  
access to property.  
GSA Number: 9-L-OR-506M

Pennsylvania  
Mahoning Creek Lake  
New Bethlehem Co: Armstrong PA 16242-  
9903  
Location: Route 28 north to Belknap, Road #4  
Landholding Agency: COE  
Property Number: 319010018  
Status: Excess  
Comment: 2.58 acres; steep and densely  
wooded.

Tracts 610, 611, 612  
Shenango River Lake  
Sharpsville Co: Mercer PA 16150-  
Location: I-79 North, I-80 West, Exit Sharon.  
R18 North 4 miles, left on R518, right on  
Mercer Avenue.

Landholding Agency: COE  
Property Number: 319011001  
Status: Excess  
Comment: 24.09 acres; subject to flowage  
easement.

Tracts L24, L26  
Crooked Creek Lake  
(See County) Co: Armstrong PA 03051-  
Location: Left bank—55 miles downstream of  
dam.  
Landholding Agency: COE  
Property Number: 319011011  
Status: Unutilized  
Comment: 7.89 acres; potential for utilities.  
6.98 acres—Army Rsv Center  
Edgemont Military Reservation  
Delchester-Gradyville Road



Willistown Township Co: Chester PA 19013—  
Landholding Agency: GSA  
Property Number: 549220004  
Status: Surplus  
Comment: 6.98 acres with dilapidated building.  
GSA Number: 4-GR-PA-632A  
5.19 acres—Army Rsv Center  
Edgemont Military Reservation  
Delchester-Gradyville Road  
Willistown Township Co: Chester PA 19013—  
Landholding Agency: GSA  
Property Number: 549220005  
Status: Surplus  
Comment: 5.19 acres with dilapidated building.  
GSA Number: 4-GR-PA-632B

Tennessee  
Tract 6827  
Barkley Lake  
Dover Co: Stewart TN 37058—  
Location: 2½ miles west of Dover, TN.  
Landholding Agency: COE  
Property Number: 319010927  
Status: Excess  
Comment: .57 acres; subject to existing easements

Tracts 6002-2 and 6010  
Barkley Lake  
Dover Co: Stewart TN 37058—  
Location: 3½ miles south of village of Tobaccoport.  
Landholding Agency: COE  
Property Number: 319010928  
Status: Excess  
Comment: 100.86 acres; subject to existing easements.

Tract 11516  
Barkley Lake  
Ashland City Co: Dickson TN 37015—  
Location: ½ mile downstream from Cheatham Dam  
Landholding Agency: COE  
Property Number: 319010929  
Status: Excess  
Comment: 26.25 acres; subject to existing easements.

Tract 2319  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130—  
Location: West of Buckeye Bottom Road  
Landholding Agency: COE  
Property Number: 319010930  
Status: Excess  
Comment: 14.48 acres; subject to existing easements.

Tract 2227  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130—  
Location: Old Jefferson Pike  
Landholding Agency: COE  
Property Number: 319010931  
Status: Excess  
Comment: 2.27 acres; subject to existing easements.

Tract 2107  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130—  
Location: Across Fall Creek near Fall Creek camping area.  
Landholding Agency: COE  
Property Number: 319010932  
Status: Excess  
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604  
Cordell Hull Lake and Dam Project  
Doe Row Creed  
Gainesboro Co: Jackson TN 38562—  
Location: TN Highway 56  
Landholding Agency: COE  
Property Number: 319010933  
Status: Unutilized  
Comment: 11 acres; subject to existing easements.

Tract 1911  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130—  
Location: East of Lamar Road  
Landholding Agency: COE  
Property Number: 319010934  
Status: Excess  
Comment: 15.31 acres; subject to existing easements.

Tract 2321  
J. Percy Priest Dam and Reservoir  
Murfreesboro Co: Rutherford TN 37130—  
Location: South of Old Jefferson Pike  
Landholding Agency: COE  
Property Number: 319010935  
Status: Excess  
Comment: 12 acres; subject to existing easements.

Tract 7206  
Barkley Lake  
Dover Co: Stewart TN 37058—  
Location: 2½ miles SE of Dover, TN.  
Landholding Agency: COE  
Property Number: 319010936  
Status: Excess  
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814  
Barkley Lake  
Cumberland Co: Stewart TN 37050—  
Location: 1½ miles East of Cumberland City.  
Landholding Agency: DOE  
Property Number: 319010937  
Status: Excess  
Comment: 96 acres; subject to existing easements.

Tract 8911  
Barkley Lake  
Cumberland City, Co: Montgomery, TN 37050—  
Location: 4 miles east of Cumberland City.  
Landholding Agency: COE  
Property Number: 319010938  
Status: Excess  
Comment: 7.7 acres; subject to existing easements.

Tract 11503  
Barkley Lake  
Ashland City, Co: Cheatham, TN 37015—  
Location: 2 miles downstream from Cheatham Dam.  
Landholding Agency: COE  
Property Number: 319010939  
Status: Excess  
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524  
Barkley Lake  
Ashland City, Co: Cheatham, TN 37015—  
Location: 2½ miles downstream from Cheatham Dam.  
Landholding Agency: COE  
Property Number: 319010940  
Status: Excess

Comment: 19.5 acres; subject to existing easements.

Tract 6410  
Barkley Lake  
Bumpus Mills, Co: Stewart, TN 37028—  
Location: 4½ miles SW. of Bumpus Mills.  
Landholding Agency: COE  
Property Number: 319010941  
Status: Excess  
Comment: 17 acres; subject to existing easements.

Tract 9707  
Barkley Lake  
Palmyer, Co: Montgomery, TN 37142—  
Location: 3 miles NE of Palmyer, TN.  
Highway 149  
Landholding Agency: COE  
Property Number: 319010943  
Status: Excess  
Comment: 6.6 acres; subject to existing easements.

Tract 6949  
Barkley Lake  
Dover, Co: Stewart, TN 37058—  
Location: 1½ miles SE of Dover, TN.  
Landholding Agency: COE  
Property Number: 319010944  
Status: Excess  
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017  
Barkley Lake  
Dover, Co: Stewart, TN 37058—  
Location: 3 miles south of Village of Tobaccoport.  
Landholding Agency: COE  
Property Number: 319011173  
Status: Excess  
Comment: 5 acres; subject to existing easements.

Tracts K-1191, K-1135  
Old Hickory Lock and Dam  
Hartsville, Co: Trousdale, TN 37074—  
Landholding Agency: COE  
Property Number: 319130007  
Status: Underutilized  
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A-102  
Dale Hollow Lake & Dam Project  
Canoe Ridge, State Hwy 52  
Celina, Co: Clay, TN 38551—  
Landholding Agency: COE  
Property Number: 319140006  
Status: Underutilized  
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A-120  
Dale Hollow Lake & Dam Project  
Swann Ridge, State Hwy No. 53  
Celina, Co: Clay, TN 38551—  
Landholding Agency: COE  
Property Number: 319140007  
Status: Underutilized  
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A-20, A-21  
Dale Hollow Lake & Dam Project  
Red Oak Ridge, State Hwy No. 53  
Celina, Co: Clay, TN 38551—  
Landholding Agency: COE  
Property Number: 319140008  
Status: Underutilized



Comment: 821 acres, most recent use—recreation, subject to existing easements.

#### Tract D-185

Dale Hollow Lake & Dam Project

Ashburn Creek, Hwy No. 53

Livingston, Co: Clay, TN 38570-

Landholding Agency: COE

Property Number: 319140010

Status: Underutilized

Comment: 883 acres, most recent use—hunting, subject to existing easements.

#### Texas

Parcel #222

Lake Texoma

(See County), Co: Grayson, TX

Location: C. Meyerheim survey A-829 J.

Hamilton survey A-529

Landholding Agency: COE

Property Number: 319010421

Status: Excess

Comment: 52.80 acres; most recent use—recreation.

#### Parts of Tracts

B-143, B-144, B-146, B-148, B-179

Downstream of Lewisville Dam embankment

Lewisville Co: Denton TX 75067-

Location: Along State Hwy 121

Landholding Agency: COE

Property Number: 319140015

Status: Underutilized

Comment: Approx. 92.81 acres in 3 parcels, most recent use—wildlife and low density recreation.

#### Washington

Land

Goodnoe Hills Substation & Wind Study Site,

Co: Klickitat, WA 98620-

Location: 15 mi SE of Goldendale on S side of St. Hwy. 122

Landholding Agency: GSA

Property Number: 549210005

Status: Excess

Comment: 123 acres w/ a 20' x 20' visitors center and a 6' x 6' substation bldg. which has secured areas.

GSA Number: 9-B-WA-1017.

#### Wyoming

Wind Site A

Medicine Bow, Co: Carbon, WY 82329-

Location: 3 miles south and 2 miles west of Medicine Bow

Landholding Agency: GSA

Property Number: 419030010

Status: Excess

Comment: 46.75 acres, limitation-easement restrictions.

#### Suitable/Unavailable Properties

#### Buildings (by State)

##### Florida

Bldg. CN7

Ortona Lock Reservation, Okeechobee

Waterway

Ortona, Co: Glades, FL 33471-

Location: Located off Highway 78

approximately 7 miles west of intersection with Highway 27.

Landholding Agency: COE

Property Number: 319010012

Status: Unutilized

Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8

Ortona Lock Reservation, Okeechobee

Waterway

Ortona, Co: Glades, FL 33471-

Location: Located off Highway 78

approximately 7 miles west of intersection with Highway 27.

Landholding Agency: COE

Property Number: 319010013

Status: Unutilized

Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence, secured with alternate access.

Bldg. CN-19

Moore Haven Lock

Okeechobee Waterway

Moore Haven, Co: Glades, FL 33471-

Location: 1 mile east of highway 27

Landholding Agency: COE

Property Number: 319011688

Status: Unutilized

Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

(P) Jacksonville Job Corps

236 W. 4th Street

Jacksonville, Co: Duval, FL 32206-

Landholding Agency: GSA

Property Number: 549140007

Status: Excess

Comment: 1250 sq. ft., 2 story residence, needs major rehab, subject to compliance with federal and local historic preservation laws

GSA Number: 4-I-FL-967.

#### Georgia

Lot 3

Lake Forrest Subdivision

Woodframe House

Hartwell, Co: Hartwell, GA

Landholding Agency: COE

Property Number: 319110026

Status: Excess

Comment: 896 sq. ft.; 2 story wood frame residence; off-site removal only.

#### Guam

Bldg. 99, Loran Station-C

Barrigada, GU 96913-

Landholding Agency: DOT

Property Number: 879220002

Status: Excess

Comment: 3960 sq. ft. concrete block transmitting station with tower.

#### Illinois

Bldg. 7

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010001

Status: Unutilized

Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010002

Status: Unutilized

Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010003

Status: Unutilized

Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010004

Status: Unutilized

Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010005

Status: Unutilized

Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010006

Status: Unutilized

Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1

Ohio River Locks & Dam No. 53

Grand Chain, Co: Pulaski, IL 62941-9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE

Property Number: 319010007

Status: Unutilized

Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

#### Indiana

Cagles Mill Lake

Cagles Mill Lake Dam

Poland, Co: Putman, IN 47868-

Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.

Landholding Agency: COE

Property Number: 319011046

Status: Unutilized

Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Dwelling #2

Cagles Mill Lake

Poland, Co: Putman, IN 47868-

Location: 5 miles west of Poland on SR 42

Landholding Agency: COE

Property Number: 319011686

Status: Unutilized

Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

#### Kentucky

Kentucky River Lock and Dam 3



Pleasureville, Co: Henry, KY 40057—  
Location: SR 421 North from Frankfort, KY. to  
highway 561, right on 561 approximately 3  
miles to site.

Landholding Agency: COE  
Property Number: 319010060  
Status: Unutilized

Comment: 897 sq. ft.; 2 story wood frame;  
structural deficiencies.

Kentucky River Lock and Dam 3  
Pleasureville, Co: Henry, KY 40057—  
Location: SR 421 north from Frankfort, KY. to  
highway 561, right on 561 approximately 3  
miles to site.

Landholding Agency: COE  
Property Number: 319010061  
Status: Unutilized

Comment: 1060 sq. ft.; 2 story wood frame;  
needs rehab.

Bldg. 1  
Kentucky River Lock and Dam  
Corrolton, Co: Carroll, KY 41008—  
Location: Take I-71 to Corrolton, KY exit, go  
east on SR #227 to Highway 320, then left  
for about 1.5 miles to site.

Landholding Agency: COE  
Property Number: 319011628  
Status: Unutilized

Comment: 1530 sq. ft.; 2 story wood frame  
house; subject to periodic flooding; needs  
rehab.

Bldg. 2  
Kentucky River Lock and Dam  
Carrolton, Co: Carroll, KY 41008—  
Location: Take I-71 to Carrolton, KY exit, go  
east on SR #227 to highway 320, then left  
for about 1.5 miles to site.

Landholding Agency: COE  
Property Number: 319011629  
Status: Unutilized

Comment: 1530 sq. ft.; 2 story wood frame  
house; subject to periodic flooding; needs  
rehab.

#### Maryland

Chesapeake Bay Hydraulic Model  
Matapeake, Co: Queen Annes, MD 21866—  
Landholding Agency: GSA

Property Number: 549040007  
Status: Excess

Comment: 617280 sq. ft., 1 story metal bldg.,  
ceiling height over 40 ft., lease restriction,  
Corps will maintain an antenna on  
property

GSA Number: 4-D-MD-578.

#### Missouri

Bldg. 208-C  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120047  
Status: Excess

Comment: 2210 sq. ft., most recent use—  
general storage, permitted to Dept. of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 208-D  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120048  
Status: Excess

Comment: 750 sq. ft., most recent use—  
general storage, permitted to Dept. of Labor

GSA Number: 7-D-MO-460-F.

Bldg. 222  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120049  
Status: Excess

Comment: 16150 sq. ft., most recent use—  
medical/dental, permitted to Dept. of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 223-A  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120050  
Status: Excess

Comment: 77340 sq. ft., most recent use—  
dormitory, permitted to Dept. of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 223-B  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120051  
Status: Excess

Comment: 21380 sq. ft., most recent use—  
education bldg., permitted to Dept. of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 230  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120052  
Status: Excess

Comment: 1840 sq. ft., most recent use—  
facility maintenance, permitted to Dept. of  
Labor

GSA Number: 7-D-MO-460-F.  
Bldg. 230-A  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120053  
Status: Excess

Comment: 1840 sq. ft., most recent use—  
facility maintenance, permitted to Dept. of  
Labor

GSA Number: 7-D-MO-460-F.  
Bldg. 232-A-H  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120054  
Status: Excess

Comment: 29280 sq. ft., most recent use—  
vocational training shop, permitted to Dept.  
of Labor

GSA Number: 7-D-MO-460-F.  
Bldg. 234  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120055  
Status: Excess

Comment: 44620 sq. ft., most recent use—  
admin/food service, permitted to Dept. of  
Labor

GSA Number: 7-D-MO-460-F.  
Bldg. 237  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120056  
Status: Excess

Comment: 300 sq. ft., most recent use—  
storage, permitted to Dept. of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 244  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120057  
Status: Excess

Comment: 7480 sq. ft., most recent use—  
weld/automotive shop, permitted to Dept.  
of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 244  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120058  
Status: Excess

Comment: 300 sq. ft., most recent use—  
storage, permitted to Dept. of Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 244  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120057  
Status: Excess

Comment: 7480 sq. ft., most recent use—  
weld/automotive shop, permitted to Dept.  
of Labor

GSA Number: 7-D-MO-460-F.  
Bldg. 223C  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120058  
Status: Excess

Comment: 123 sq. ft., permitted to Dept. of  
Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 224B  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120059  
Status: Excess

Comment: 100 sq. ft., permitted to Dept. of  
Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 233A  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120060  
Status: Excess

Comment: 837 sq. ft., permitted to Dept. of  
Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 233F  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120061  
Status: Excess

Comment: 837 sq. ft., permitted to Dept. of  
Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 233F  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120061  
Status: Excess

Comment: 837 sq. ft., permitted to Dept. of  
Labor  
GSA Number: 7-D-MO-460-F.

Bldg. 233F  
6400 Stratford Avenue  
Portion U.S. Army Reserve Center No. 4  
St. Louis, Co: St. Louis, MO 63120—

Landholding Agency: GSA  
Property Number: 549120061  
Status: Excess

Comment: 21,635 sq. ft., 2 story plus  
basement, brick & masonry frame on 1.68  
acres of improved land.

GSA Number: 7-F-NM-509B.  
Bldg. 1 and 4



U.S. Navy Reserve Center  
512 N 12th Street  
Carlsbad Co: Eddy NM 88220-3046  
Landholding Agency: GSA  
Property Number: 779040001  
Status: Excess  
Comment: 2,460 sq. ft., one story, frame/  
concrete block bldg., most recent use—  
office, presence of asbestos, and 152 sq. ft.  
metal storage shed on 1.03 acres.  
GSA Number: 7-N-NM-0555.

#### New York

Bldg. 1  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings NY 11251-  
Landholding Agency: GSA  
Property Number: 549120008  
Status: Excess  
Comment: 31,519 sq. ft., 7 story brick frame,  
presence of asbestos on pipe insulation,  
scheduled to be vacated Oct. 1992  
GSA Number: 7-N-NY-797.  
Bldg. 2  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120009  
Status: Excess  
Comment: 35,537 sq. ft., 3 story bay brick  
frame, presence of asbestos on pipe  
insulation, most recent use—office, storage,  
auto shop, scheduled to be vacated Oct.  
1992  
GSA Number: 2-N-NY-797.

Bldg. 3  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings NY 11251-  
Landholding Agency: GSA  
Property Number: 549120010  
Status: Excess  
Comment: 2,700 sq. ft., 2 story brick frame,  
most recent use—office, scheduled to be  
vacated Oct. 1992.  
GSA Number: 2-N-NY-797.

Bldg. 5  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120012  
Status: Excess  
Comment: 3,330 sq. ft., 2 story brick frame,  
most recent use—office, scheduled to be  
vacated Oct. 1992.  
GSA Number: 2-N-NY-797.

Bldg. 10  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120015  
Status: Excess  
Comment: 3,100 sq. ft., 1 story, concrete &  
fiberglass frame, no utilities, most recent  
use—storage, scheduled to be vacated Oct.  
1992.  
GSA Number: 2-N-NY-797.

Bldg. 306  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-

Landholding Agency GSA  
Property Number: 549120018  
Status: Excess  
Comment: 8,364 sq. ft., 1 story brick frame,  
presence of asbestos on pipe insulation,  
most recent use—storage, scheduled to be  
vacated Oct. 1992.  
GSA Number: 2-N-NY-797.  
Bldg. 311  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120017  
Status: Excess  
Comment: 9720 sq. ft., 2 story brick frame,  
needs heating system repairs, needs rehab,  
presence of asbestos on pipe insulat., most  
recent use—of c/storage, sched. to be  
vacated Oct. 1992  
GSA Number: 2-N-NY-797.  
Bldg. 316  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120019  
Status: Excess  
Comment: 3952 sq. ft., 1 story brick frame,  
needs heating system repairs, potential  
utils., pres. of asbestos on pipe insula, most  
recent use—storage, sched. to be vacated  
Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. 353  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120020  
Status: Excess  
Comment: 670 sq. ft., 1 story brick frame,  
limited utilities, needs rehab, most recent  
use—storage, needs heating system repairs,  
scheduled to be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. 670  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120021  
Status: Excess  
Comment: Concrete block gasoline station, no  
sanitary or heating facilities, scheduled to  
be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. 672  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120023  
Status: Excess  
Comment: 400 sq. ft., 1 story wood frame,  
most recent use—pool house, scheduled to  
be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R1  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120025  
Status: Excess

Comment: 5274 sq. ft., 2 story single family  
housing, brick veneer/wood frame,  
presence of asbestos on pipe insulation,  
scheduled to be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R2  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120026  
Status: Excess  
Comment: 2400 sq. ft., 2 story single family  
hsg., cement asbestos/wood frame, needs  
heating system repairs, presence of  
asbestos on pipe insulation, scheduled to  
be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R3  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120027  
Status: Excess  
Comment: 2400 sq. ft., 2 story single family  
housing, cement asbestos/wood frame,  
scheduled to be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R4  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120028  
Status: Excess  
Comment: 2517 sq. ft., 3 story four-family  
housing, brick asbestos/tile frame,  
scheduled to be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R5  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120029  
Status: Excess  
Comment: 2140 sq. ft., 1 story single family  
residence, brick frame, scheduled to be  
vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R6  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120030  
Status: Excess  
Comment: 2140 sq. ft., 1 story single family  
residence, brick frame, needs rehab,  
scheduled to be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R7  
Naval Station New York  
207 Flushing Avenue  
Brooklyn Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120031  
Status: Excess  
Comment: 2140 sq. ft., 1 story single family  
housing, brick frame, needs rehab,  
scheduled to be vacated Oct. 1992  
GSA Number: 2-N-NY-797.

Bldg. R103



Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120032  
Status: Excess

Comment: 1650 sq. ft., 2 story brick frame, needs heating system repairs, limited utils., most recent use—storage, presence of asbestos on pipe ins., scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R103A

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120033  
Status: Excess

Comment: 2620 sq. ft., 1 story concrete block frame, limited utils., most recent use—garage, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R104

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120034  
Status: Excess

Comment: 712 sq. ft., 2 story brick frame, most recent use—bachelor officers quarters, scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R109

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120035  
Status: Excess

Comment: 2 story brick frame, limited utilities, needs heating syst. repairs, most recent use—storage & garage, presence of asbestos on pipe insul., scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R426

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120036  
Status: Excess

Comment: 2409 sq. ft., 1 story brick frame, needs heating system repairs, most recent use—storage, presence of asbestos on pipe ins., limited utils., scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R448

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120037  
Status: Excess

Comment: 969 sq. ft., 1 story concrete & glass frame, limited utilities, needs major rehab, most recent use—greenhouse, scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R475

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120039  
Status: Excess

Comment: 1789 sq. ft., 1 story concrete block frame, most recent use—auto hobby shop, presence of asbestos on pipe insulation scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R476

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120040  
Status: Excess

Comment: 36 sq. ft., 1 story metal frame, most recent use—security gate house, needs heating system repairs, scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. RG

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120041  
Status: Excess

Comment: 15,490 sq. ft., 3 story brick & stucco frame, needs heating system repairs, needs major rehab, presence of asbestos on pipe ins., scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R8R9

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120042  
Status: Excess

Comment: 2800 sq. ft., 2 story brick frame, most recent use—residential duplex, scheduled to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. R95

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 779010256  
Status: Excess

Comment: 41,800 sq. ft., 2 story stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, NYS Historical Landmark, sched. to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. RD

Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 779010257  
Status: Excess

Comment: 14,120 sq. ft., 2 story brick and stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, sched. to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

Bldg. 305

Naval Station  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-

Landholding Agency: GSA  
Property Number: 779010258  
Status: Excess

Comment: 18920 sq. ft., 2 story brick frame, limited util., needs major rehab, presence of asbestos on pipe insulation, needs heating system repairs, schedules to be vacated Oct. 1992

GSA Number: 2-N-NY-797.

### North Dakota

Calhoun Radio Relay Tower Site  
5 miles north and 1 mile west of Hannover,  
North Dakota, Co: Oliver, ND 58563-

Landholding Agency: GSA  
Property Number: 549130015  
Status: Excess

Comment: One story 12' x 10'8" communication tower on concrete slab w/ 5.74 acres and 0.66 acre easement, potential utilities, needs rehab

GSA Number: 7-B-ND-489.

### Ohio

Parcel 2

Lock and Dam #16  
Washington, Co: Washington, OH  
Location: On the Ohio River; 4 miles downstream from New MataMoras, Grandview Township.

Landholding Agency: GSA  
Property Number: 549110010  
Status: Excess

Comment: Two story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—office space

GSA Number: 2-GR(1)-OH-730.

Parcel 1

Lock and Dam #16  
Washington, Co: Washington, OH  
Location: On the Ohio River, 4 miles downstream from New MataMoras, Grandview Township.

Landholding Agency: GSA  
Property Number: 549110011  
Status: Excess

Comment: 2.5 story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—storage

GSA Number: 2-GR(1)-OH-730.

### Pennsylvania

Conemaugh River Lake  
Road #1, Box 702  
Salisbury, Co: Indiana PA, 15681-  
Landholding Agency: COE  
Property Number: 319010019  
Status: Unutilized

Comment: 2642 sq. ft.; one unit of brick/frame duplex; most recent use—residence.

### Tennessee

Transient Quarters  
Dale Hollow Lake and Dam Project  
Dale Hollow Resource Mgr Office, Rt 1, Box 64

Celina, Co: Clay, TN 38551-  
Landholding Agency: COE  
Property Number: 319140005  
Status: Unutilized

Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements.

Federal Building  
216 North Jackson Street



Athens, Co: McMinn, TN 37303—  
Landholding Agency: GSA  
Property Number: 549210003  
Status: Excess  
Comment: 2069 sq. ft., 3 story brick and concrete frame, presence of asbestos on pipes and air ducts in mechanical areas, most recent use—offices.  
GSA Number: 4-G-TN-632.

#### Texas

Bldg. 6-B  
Brazos River Floodgates  
Freeport, Co: Brazoria, TX 77541—  
Location: 5 miles south of Freeport.  
Landholding Agency: COE  
Property Number: 319110030  
Status: Unutilized  
Comment: 1100 sq. ft.; 2 story wood frame; needs major rehab; possible asbestos; off-site use only.

Bldg. 6-C  
Colorado River Locks  
109 Colorado River Locks  
Matagorda, Co: Matagorda, TX 77547—  
Landholding Agency: COE  
Property Number: 319110031  
Status: Unutilized  
Comment: 1100 sq. ft.; 1 story wood frame; needs rehab; off-site use only.

Peary Place #1  
Naval Air Station  
Corpus Christi, Co: Nueces, TX 78419-5000  
Landholding Agency: GSA  
Property Number: 779030002  
Status: Excess  
Comment: 9160 sq. ft., 1 story, possible asbestos, most recent use—remote transmitter site.  
GSA Number: 7-N-TX-402-V.

Brownsville Urban System, (Grantee)  
700 South Iowa Avenue  
Brownsville, Co: Cameron, TX 78520—  
Landholding Agency: DOT  
Property Number: 879010003  
Status: Unutilized  
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

#### Virginia

Tract HH 3331-E  
John H. Kerr Reservoir  
Woodframe House  
South Boston, Co: Halifax, VA  
Landholding Agency: COE  
Property Number: 319110027  
Status: Excess  
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

#### Washington

Mica Peak Radio Station  
Approx. 15 miles SE of Spokane  
Spokane, Co: Spokane, WA 99210—  
Landholding Agency: GSA  
Property Number: 549120065  
Status: Excess  
Comment: 25X48 ft. 0.4 acres 1 story concrete block, most recent use—radio communications, only accessible from late June to October  
GSA Number: 9-B-WA-895.

#### Wisconsin

Former Lockmaster's Dwelling

DePere Lock  
100 James Street  
De Pere, Co: Brown, WI 54115—  
Landholding Agency: COE  
Property Number: 319011526  
Status: Unutilized  
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

#### Land (by State)

##### Alaska

Portion, Dyke Range  
Old Richardson Hwy.  
North Pole, Co: Fairbanks, AK 00805—  
Landholding Agency: GSA  
Property Number: 549130018  
Status: Excess  
Comment: 0.73 acre—75% of land encroached upon by private residence  
GSA Number: 9-D-AK-727  
Former Ft. Wainwright Annex  
Corner of 12th Ave. and Alasdom Rd.  
Fairbanks, AK 99707—  
Landholding Agency: GSA  
Property Number: 549220013  
Status: Surplus  
Comment: 1.89 acres, easement restrictions  
GSA Number: 9-D-AK-0537R.

##### California

Receiver Site  
Dixon Relay Station  
7514 Radio Station Road  
Dixon, CA 95820-9653  
Location: Approximately .16 miles southeast of Dixon, CA.  
Property Number: 549010042  
Status: Excess  
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.  
GSA Number: 9-2-CA-1162-A.  
Remote Transmitter  
Section 35  
Red Bluff, Co: Tehama, CA 96080—  
Landholding Agency: DOT  
Property Number: 879010010  
Status: Unutilized  
Comment: 4 acres, paved road, current use—storage.

##### Florida

Parcel A & B  
U.S. Coast Guard Light Station  
Lots 1, 8 & 11, Section 31  
Jupiter Inlet Co: Palm Beach FL 33420—  
Location: Township 40 south, range 43 east.  
Landholding Agency: DOT  
Property Number: 879010009  
Status: Unutilized  
Comment: 58.61 acres, area is uncleared, vegetation growth is heavy, no utilities.

##### Georgia

E.O. Tract A  
J. Strom Thurmond Dam and Reservoir  
(See County) Co: Columbia, GA  
Location: 3 miles east of GA 104 and Ridge Road intersection.  
Landholding Agency: COE  
Property Number: 319011516  
Status: Unutilized  
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

##### E.O. Tract B

J. Strom Thurmond Dam and Reservoir  
(See County) Co: Columbia, GA  
Location: 3 miles east of GA 104 and Ridge Road intersection.  
Landholding Agency: COE  
Property Number: 319011517  
Status: Unutilized  
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

##### E.O. Tract F

J. Strom Thurmond Dam and Reservoir  
(See County) Co: Columbia, GA  
Location: Approximately 2 miles east of GA 104 and Key Creek Road intersection.  
Landholding Agency: COE  
Property Number: 319011519  
Status: Unutilized  
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

##### E.O. Tract E

J. Strom Thurmond Dam and Reservoir  
(See County) Co: Columbia, GA  
Location: Approximately 1½ miles east of GA 104 and Key Creek Road intersection.  
Landholding Agency: COE  
Property Number: 319011520  
Status: Unutilized  
Comment: 12 acres; potential utilities; most recent use—forest reserve and wildlife management.

##### E.O. Tract G

J. Strom Thurmond Dam and Reservoir  
(See County), Co: Columbia, GA  
Location: 4 miles east of GA 104 and Ridge Road intersection.  
Landholding Agency: COE  
Property Number: 319011521  
Status: Unutilized  
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

##### E.O. Tract I

J. Strom Thurmond Dam and Reservoir  
(See County), Co: Columbia, GA  
Location: 4 miles east of GA 104 and Ridge Road intersection.  
Landholding Agency: COE  
Property Number: 319011523  
Status: Unutilized  
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

##### Guam

Portion, Former Marbo Base Command "B"-4  
Andersen Air Force Base (Admin Annex)  
Yigo, GU  
Landholding Agency: GSA  
Property Number: 549220007  
Status: Surplus  
Comment: 80 acres, land/water use restriction, former housing area, paved roads on property are buried u/moss and encroaching jungle, potential utilities.  
GSA Number: 9-D-GU-411A.

##### Kansas

Dragoon Access Area  
Pomona Lake  
Vassar, Co: Osage, KS 66543—  
Location: Upper reaches of north shore of the Pomona Lake, approximately 10.5 miles north and east of London.  
Landholding Agency: COE  
Property Number: 319011543  
Status: Underutilized



Comment: 110 acres; portion in floodway/  
reservoir flood control area.

#### Titan II Missile S-17

McConnell Air Force Base Co: Kingman KS  
67068-

Location: 4 miles east on US Hwy 54 and 3  
miles north on FAS 361

Landholding Agency: GSA

Property Number: 549210001

Status: Excess

Comment: 10.26 acres fee and 2/43 acres  
easement (paved), potential utilities, PCB's  
underground on 1 acre, most recent use—  
missile site.

GSA Number: 7-D-KS-477-Q.

#### Titan II Missile S-12

McConnell Air Force Base, Co: Sumner, KS  
67221-

Location: 1.5 miles south of Conway Springs,  
KS on State Hwy 49

Landholding Agency: GSA

Property Number: 549210002

Status: Excess

Comment: 16.75 acres fee and 3.79 acres  
easement (paved), potential utilities, PCB's  
underground on 1 acre, most recent use—  
missile site.

GSA Number: 7-D-KS-477-R.

#### Massachusetts

Por. of Former Navy Ammo. Pit.

Fort Hill Street

Hingham, Co: Plymouth, MA 02043-

Location: Across from Bus Company Parking  
Garage.

Landholding Agency: GSA

Property Number: 549030017

Status: Excess

Comment: 1.129 acres, gravel pavement, most  
recent use—parking lot.

GSA Number: 2-CR-MA-591B.

#### New York

Land 671

Naval Station New York

207 Flushing Avenue

Brooklyn, Co: Kings, NY 11251-

Landholding Agency: GSA

Property Number: 549120022

Status: Excess

Comment: 50 ft. by 25 ft., most recent use—  
swimming pool concrete frame, scheduled  
to be vacated Oct. 1992.

GSA Number: 2-N-NY-797.

Playing Field-675

Naval Station New York

207 Flushing Avenue

Brooklyn, Co: Kings, NY 11251-

Landholding Agency: GSA

Property Number: 549120024

Status: Excess

Comment: 67974 sq. ft., limited utilities, most  
recent use—baseball field, scheduled to be  
vacated Oct. 1992.

GSA Number: 2-N-NY-797.

Land R464/R474

Naval Station New York

207 Flushing Avenue

Brooklyn, Co: Kings, NY 11251-

Landholding Agency: GSA

Property Number: 549120043

Status: Excess

Comment: 90' x 45' each, concrete over  
gravel, most recent use—tennis courts,  
scheduled to be vacated Oct. 1992.

GSA Number: 2-N-NY-797.

#### North Dakota

Valley City Radio Tower Site

1 mile south and 1 mile east of Valley City,

North Dakota

Valley City, Co: Barnes, ND 58072-

Landholding Agency: GSA

Property Number: 549130016

Status: Excess

Comment: 5.74 acres w/one story metal  
equipment storage bldg. 12' x 10.8",  
potential utilities.

GSA Number: 7-B-ND-490.

Tappen Radio Relay Tower Site

2 miles east and 1.5 miles north of Tappen

Tappen, Co: Kidder, ND 58487-

Landholding Agency: GSA

Property Number: 549130017

Status: Excess

Comment: 5.74 fee acres and 0.59 acre  
easement w/100' guyed communication  
tower, potential utilities.

GSA Number: 7-B-ND-491.

#### Oklahoma

45 acre parcel, Sardis Lake

SE¼ NE¼ Section 4, T 2 N, R 18 E Co:

Pushmataha, OK 74521-

Landholding Agency: COE

Property Number: 319140004

Status: Excess

Comment: approx. 45 acres, most recent  
use—fish and wildlife conservation.

Parcel No. 54/GSA No. 6

Lake Texoma, Co: Marshall, OK 73439-

Location: Section 17, 3½ miles north of Little  
City, OK

Landholding Agency: GSA

Property Number: 549210007

Status: Excess

Comment: 5.05 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 63/GSA No. 8

Lake Texoma, Co: Marshall, OK 73439-

Location: Section 19, 3½ miles southwest of  
Cumberland, OK

Landholding Agency: GSA

Property Number: 549210008

Status: Excess

Comment: 40.32 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 66/GSA No. 9

Lake Texoma, Co: Marshall, OK 73439-

Location: Sections 12 and 13, 2½ miles  
southwest of Cumberland, OK

Landholding Agency: GSA

Property Number: 549210009

Status: Excess

Comment: 14.05 acres, potential utilities, most  
recent use—low density recreation/natural  
gas well and pipelines.

GSA Number: 7-D-OK-0507-H.

Parcel No. 78/GSA No. 11

Lake Texoma, Co: Marshall, OK 73439-

Location: Section 24, 1 mile east of McBride,  
OK

Landholding Agency: GSA

Property Number: 549210010

Status: Excess

Comment: 30.28 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 86/GSA No. 12

Lake Texoma, Co: Marshall, OK 73439-

Location: Section 1824, 3½ miles south of  
Kingston, OK

Landholding Agency: GSA

Property Number: 549210011

Status: Excess

Comment: 13 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 125/GSA No. 14

Lake Texoma, Co: Marshall, OK 73439-

Location: Section 17

Landholding Agency: GSA

Property Number: 549210012

Status: Excess

Comment: 11.24 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 150/GSA No. 15

Lake Texoma, Co: Marshall, OK 73439-

Location: Section 6

Landholding Agency: GSA

Property Number: 549210013

Status: Excess

Comment: 12.64 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 184/GSA No. 16

Lake Texoma, Co: Love, OK 73441-

Location: Section 3

Landholding Agency: GSA

Property Number: 549210014

Status: Excess

Comment: 40.20 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 165/GSA No. 17

Lake Texoma, Co: Love, OK 73441-

Location: Section 3

Landholding Agency: GSA

Property Number: 549210015

Status: Excess

Comment: 32.82 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

Parcel No. 166/GSA No. 18

Lake Texoma, Co: Love, OK 73441-

Location: Section 10

Landholding Agency: GSA

Property Number: 549210016

Status: Excess

Comment: 62.61 acres, potential utilities, most  
recent use—low density recreation.

GSA Number: 7-D-OK-0507-H.

#### Pennsylvania

East Branch Clarion River Lake

Wilcox, Co: Elk, PA

Location: Free camping area on the right bank  
off entrance roadway.

Landholding Agency: COE

Property Number: 319011012

Status: Underutilized

Comment: 1 acre; most recent use—free  
campground.

#### South Carolina

E. O. Tract J

J. Strom Thurmond Dam and Reservoir

(See County), Co: McCormick, SC

Location: 4 miles southwest of Plum Branch  
SC on road to Clarks Mill Marina.

Landholding Agency: COE

Property Number: 319011514

Status: Unutilized



Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.

#### E. O. Tract C

J. Strom Thurmond Dam and Reservoir  
(See County), Co: McCormick, SC  
Location: Approximately 1 mile north of US  
221 and SC 28 intersection.

Landholding Agency: COE  
Property Number: 319011515  
Status: Unutilized

Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

#### South Dakota

Por. of Pactola Dist. Ad. Site  
803 Soo San Drive  
Rapid City, Co: Pennington, SD 57702—  
Landholding Agency: GSA  
Property Number: 159130003  
Status: Excess  
Comment: 5.58 acres; potential utilities  
GSA Number: 7-A-SD-511.

#### Tennessee

Cates Casting Field  
Mississippi River and Tributaries Project  
Hwy. 22  
Tiptonville, Co: Lake, TN 38079—  
Landholding Agency: GSA  
Property Number: 319210010  
Status: Excess  
Comment: 57.0 acres, remote area, subject to  
periodic flooding  
GSA Number: 4-D-TN-633.  
Loading Site  
Cates Casting Field  
Mississippi River and Tributaries Project  
Tiptonville, Co: Lake, TN 38079—  
Landholding Agency: GSA  
Property Number: 319210011  
Status: Excess  
Comment: 8.3 acres, remote area, subject to  
periodic flooding  
GSA Number: 4-D-TN-634.

#### Texas

Part of Tract A-10  
(See County), Co: Tarrant, TX  
Location: Off FM 2499 at north end of dam  
embankment  
Landholding Agency: COE  
Property Number: 319010390  
Status: Excess  
Comment: 0.29 acres; most recent use—  
parking lot.  
Part of Tract 340  
Joe Pool Lake  
(See County), Co: Dallas, TX  
Landholding Agency: COE  
Property Number: 319010400  
Status: Unutilized  
Comment: 1 acre; future use—recreation.  
Test Tract—Formerly Jet Ind.  
Burleson Road  
Austin, Co: Travis, TX 78741—  
Location: Approx. 7 mi NW of U.S. Hwy 183  
and approx. 3.5 mi SE of Ben White Blvd.  
Landholding Agency: GSA  
Property Number: 549140008  
Status: Excess  
Comment: 75.81 acres, most recent use—one  
mile asphalt test track for electric cars,  
approx. 15 acres in floodplain  
GSA Number: 7-B-TX-970.

#### Virginia

St. Helena Annex, (former portion)  
Treadwell and South Main Streets  
Norfolk, Co: Norfolk, VA 23523—  
Landholding Agency: GSA  
Property Number: 549120005  
Status: Excess  
Comment: 7.69 acres, most recent use—paved  
parking lot  
GSA Number: 4-GR(2)-VA525AA.

#### Suitable/To Be Excessed

#### Buildings (by State)

##### Kentucky

Bldg.—Markland Locks & Dam  
Hwy 42, 3.5 miles downstream of Warsaw  
Warsaw, Co: Gallatin, KY 41095—  
Landholding Agency: COE  
Property Number: 319130004  
Status: Unutilized  
Comment: 64 sq. ft., 1 story wood frame, most  
recent use—utility, off-site use only.

##### Michigan

Former C. G. Lightkeeper Sta.  
Little Rapids Channel Project  
St. Marys River  
Sault Ste. Marie, Co: Chippewa, MI 49783—  
Location: 3 miles east of downtown Sault Ste.  
Marie.  
Landholding Agency: COE  
Property Number: 319011573  
Status: Excess  
Comment: 1411 sq. ft.; 2 story; wood frame on  
.62 acres; needs rehab; secured area with  
alternate access.

##### New Mexico

Bldg. 234, LPN Service Bldg.  
1015 Indian School Road  
Albuquerque, Co: Bernalillo, NM 87102—  
Landholding Agency: HHS  
Property Number: 579220001  
Status: Unutilized  
Comment: 3500 sq. ft., 1 story, limited utilities,  
most recent use—maintenance shop; and  
.114 acre parking lot (unpaved), secured  
area with alternate access.

##### New York

Former Damtender's House  
East Sidney Lake  
Franklin, Co: Delaware, NY 13775—  
Location: Located on the corner of Triverfold  
Rd. and County Rd. 44  
Landholding Agency: COE  
Property Number: 319210007  
Status: Excess  
Comment: 1605 sq. ft., 2 story wood frame  
residence with 1 acre of land, asbestos  
shingle siding.

##### South Carolina

Bldg. #1 U.S. Coast Guard  
Folly Island Loran Station  
Folly Island, Co: Charleston, SC 29401—  
Landholding Agency: DOT  
Property Number: 879120096  
Status: Unutilized  
Comment: 2340 sq. ft., 1 story concrete block,  
most recent use—communications station.  
Bldg. #2 U.S. Coast Guard  
Folly Island Loran Station  
Folly Island, Co: Charleston, SC 29401—  
Landholding Agency: DOT

Property Number: 879120097

Status: Unutilized

Comment: 2050 sq. ft., 1 story concrete block,  
most recent use—communications station.

#### Land (by State)

##### Indiana

Cecil M. Harden Lake Project  
Rockville, Co: Parke, IN 47872—  
Location: Route 57 at intersection w/county  
road 910E.  
Landholding Agency: COE  
Property Number: 319011689  
Status: Excess  
Comment: 2.68 acres; narrow triangular  
shaped area of land.  
Tracts 903, 905, 905-C  
Patoka Lake Project  
Taswell, Co: Crawford, IN 47527—  
Location: From French Lick, IN, take SR 145S  
for 10 miles. to intersection with SR 164,  
property lies east and adjacent to highway  
145.  
Landholding Agency: COE  
Property Number: 319030003  
Status: Excess  
Comment: 22.35 acres; limited utilities.  
Tracts 142-A, 143  
Patoka Lake Project  
Dubois, Co: Dubois, IN 47527-9661  
Location: From French Lick, IN take SR 145 S.  
for 20 miles to SR 164, go west on 164 for 7  
miles to Celestine Road, go North on  
Celestine for 5 miles to Dubois Co. Road  
475, then right for ¼ mile to property.  
Landholding Agency: COE  
Property Number: 319030004  
Status: Excess  
Comment: 21.30 acres; limited utilities;  
subject to periodic flooding.  
Tract 142-B  
Patoka Lake Project  
Dubois, Co: Dubois, IN 47527-9661  
Location: From French Lick, IN take SR 145 S  
for 20 miles to SR 164, go west on 164 for 7  
miles to Celestine Road, go North on  
Celestine for 5 miles to Dubois Co. Road  
475, then right for ¼ miles to property.  
Landholding Agency: COE  
Property Number: 319030005  
Status: Excess  
Comment: 4.74 acres; limited utilities; subject  
to periodic flooding.  
Tract 601  
Patoka Lake Project  
French Lick, Co: Orange, IN 47527—  
Location: IN. State Highway 145 south to  
Jordan Branch Road, Property abuts east  
right-of-way for Jordan Road.  
Landholding Agency: COE  
Property Number: 319030006  
Status: Excess  
Comment: 0.41 acre; limited utilities.  
  

##### Kansas

  
Parcel #1  
Fall River Lake  
Section 26  
(See County), Co: Greenwood, KS  
Landholding Agency: COE  
Property Number: 319010065  
Status: Unutilized  
Comment: 155 acres; most recent use—  
recreation and leased cottage sites.



Parcel #2  
Fall River Lake  
Section 25 and 26  
(See County), Co: Greenwood, KS  
Landholding Agency: COE  
Property Number: 319010066  
Status: Excess  
Comment: 38.62 acres; most recent use—recreation.

Parcel #3  
Fall River Lake  
Section 26  
(See County), Co: Greenwood, KS  
Landholding Agency: COE  
Property Number: 319010067  
Status: Excess  
Comment: 22.44 acres; most recent use—recreation.

Parcel No. 2, El Dorado Lake  
Approx. 1 mi east of the town of El Dorado,  
Co: Butler, KS  
Landholding Agency: COE  
Property Number: 319210005  
Status: Unutilized  
Comment: 11 acres, part of a relocated  
railroad bed, rural area.

#### Kentucky

Tract B—Markland Locks & Dam  
Hwy 42, 3.5 miles downstream of Warsaw  
Warsaw, Co: Gallatin, KY 41095—  
Landholding Agency: COE  
Property Number: 319130002  
Status: Unutilized  
Comment: 10 acres, most recent use—  
recreational, possible periodic flooding.

Tract A—Markland Locks & Dam  
Hwy 42, 3.5 miles downstream of Warsaw  
Warsaw, Co: Gallatin, KY 41095—  
Landholding Agency: COE  
Property Number: 319130003  
Status: Unutilized  
Comment: 8 acres, most recent use—  
recreational, possible periodic flooding.

Tract C—Markland Locks & Dam  
Hwy 42, 3.5 miles downstream of Warsaw  
Warsaw, Co: Gallatin, KY 41095—  
Landholding Agency: COE  
Property Number: 319130005  
Status: Unutilized  
Comment: 4 acres, most recent use—  
recreational, possible periodic flooding.

#### Massachusetts

Buffumville Dam  
Flood Control Project  
Gale Road  
Carlton, Co: Worcester, MA 01540-0155  
Location: Portion of tracts B-200, B-248, B-  
251, B-204, B-247, B-200 and B-256  
Landholding Agency: COE  
Property Number: 319010016  
Status: Excess  
Comment: 1.45 acres.  
Conant Brook Dam  
Flood Control Dam  
Wales Road  
Monson, Co: Hampden, MA 01057—  
Location: Portion of Tract 211  
Landholding Agency: COE  
Property Number: 319010017  
Status: Excess  
Comment: 5.27 acres.  
Hodges Village  
Dam Flood Control Project

Old Howarth Road  
Oxford, Co: Worcester, MA 01540-0500  
Location: Portion of Tract A-108, See Project  
Manager at Hodges Village Dam, Oxford,  
MA (508) 987-2600.  
Landholding Agency: COE  
Property Number: 319011006  
Status: Excess  
Comment: 6.02 acres; 3 acres paved road,  
subject to utility easement.

#### Michigan

U.S. Coast Guard—Air Station  
Traverse City, Co: Grand Traverse, MI 49684—  
Landholding Agency: DOT  
Property Number: 879120099  
Status: Underutilized  
Comment: 21.7 acres, most recent use—helo  
landings.

#### Oklahoma

Parcel No. 100  
Lake Texoma  
Section 25, T7S, R5E  
Enos, Co: Marshall, OK  
Location: 1 mile northeast of Enos  
Landholding Agency: COE  
Property Number: 319010440  
Status: Unutilized  
Comment: 11.77 acres; most recent use—  
recreation.

Parcel No. 7  
Kaw Lake  
Section 27  
(See County), Co: Kay, OK  
Landholding Agency: COE  
Property Number: 319010842  
Status: Excess  
Comment: 21 acres; potential utilities; most  
recent use—recreation

Parcel No. 3  
Sardis Lake  
Section 21  
(See County), Co: Latimer, OK  
Landholding Agency: COE  
Property Number: 319010843  
Status: Excess  
Comment: 2.5 acres; potential utilities; most  
recent use—wildlife management.

Parcel No. 4  
Sardis Lake  
Section 21  
(See County), Co: Latimer, OK  
Landholding Agency: COE  
Property Number: 319010844  
Status: Excess  
Comment: 4.5 acres; potential utilities; most  
recent use—wildlife management.

#### Oregon

Tract 108 (Portion of)  
Willow Creek Lake Project  
Heppner, Co: Morrow, OR 97836—  
Location: Located up hill from the left  
abutment of the dam structure.  
Landholding Agency: COE  
Property Number: 319011687  
Status: Unutilized  
Comment: 2.25 acres; unimproved land;  
secured area with alternate access.

#### Pennsylvania

Dashields Locks and Dam  
(Glenwillard, PA)  
Crescent Twp., Co: Allegheny, PA 15046-0475  
Landholding Agency: COE

Property Number: 319210009  
Status: Unutilized  
Comment: 0.58 acres, most recent use—  
baseball field.

#### South Carolina

Land—U.S. Coast Guard  
Folly Island Loran Station  
Folly Island, Co: Charleston, SC 29401—  
Landholding Agency: DOT  
Property Number: 879120098  
Status: Unutilized  
Comment: 55 acres (88 acres submerged) tidal  
marshland, potential utilities.

#### Tennessee

Tract D-456  
Cheatham Lock and Dam  
Ashland, Co: Cheatham, TN 37015—  
Location: Right downstream bank of  
Sycamore Creek.  
Landholding Agency: COE  
Property Number: 319010942  
Status: Excess  
Comment: 8.93 acres; subject to existing  
easements.

#### Texas

Tract J-957  
Whitney Lake  
Bosque, Co: Bosque, TX  
Location: Via Avenue B within the  
community of Kopperl.  
Landholding Agency: COE  
Property Number: 319110029  
Status: Unutilized  
Comment: .18 acres; potential utilities;  
encroachments on large portion of  
property.  
Tract J-936  
Whitney Lake  
Bosque, Co: Bosque, TX  
Location: Off F. M. Highway 56 within the  
community of Kopperl.  
Landholding Agency: COE  
Property Number: 319110032  
Status: Unutilized  
Comment: 5.4 acres; potential utilities.  
Tract F-516 O.C. Fisher Lake  
Parallel with Grape Creek Road  
San Angelo, Co: Tom Green, TX 76902-3085  
Landholding Agency: COE  
Property Number: 319120002  
Status: Unutilized  
Comment: 2.13 acres, potential limited  
utilities.

Part of Tract 102, Segment 1  
Bardwell Dam Road  
Ennis, Co: Ellis, TX 75119—  
Landholding Agency: COE  
Property Number: 319140014  
Status: Unutilized  
Comment: Approx. 4.5 acres.

#### Unsuitable Properties

#### Buildings (by State)

##### Alabama

Dwelling A  
USCG Mobile Pt. Station  
Fl. Morgan  
Gulfshores, Co: Baldwin, AL 36542—  
Landholding Agency: DOT  
Property Number: 879120001  
Status: Excess



Reason: Floodway.

Dwelling B  
USCG Mobile Pt. Station  
Ft. Morgan  
Gulfshores, Co: Baldwin, AL 36542-  
Landholding Agency: DOT  
Property Number: 879120002  
Status: Excess  
Reason: Floodway.

Oil House  
USCG Mobile Pt. Station  
Ft. Morgan  
Gulfshores, Co: Baldwin, AL 36542-  
Landholding Agency: DOT  
Property Number: 879120003  
Status: Excess  
Reason: Floodway

Garage  
USCG Mobile Pt. Station  
Ft. Morgan  
Gulfshores, Co: Baldwin, AL 36542-  
Landholding Agency: DOT  
Property Number: 879120004  
Status: Excess  
Reason: Floodway

Shop Building  
USCG Mobile Pt. Station  
Ft. Morgan  
Gulfshores, Co: Baldwin, AL 36542-  
Landholding Agency: DOT  
Property Number: 879120005  
Status: Excess  
Reason: Floodway.

#### Alaska

Bldg. 28  
USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210126  
Status: Excess  
Reason: Within airport runway clear zone,  
secured area.

Bldg. 24  
USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210127  
Status: Excess  
Reason: Within airport runway clear zone,  
secured area, within 2000 ft. of flammable  
or explosive material.

Bldg. 19  
USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210128  
Status: Excess  
Reason: Within airport runway clear zone,  
secured area, other  
Comment: Extensive deterioration.

Bldg. 94  
USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210129  
Status: Excess  
Reason: Secured area, other  
Comment: Extensive deterioration.

Bldg. 85  
USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210130  
Status: Excess

Reason: Secured area, other  
Comment: Extensive deterioration.  
Bldg. 18

USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210132  
Status: Excess

Reason: Secured area, within airport runway  
clear zone  
GSA Number: U-ALAS-655A.

Bldg. A512  
USCG Support Center  
Kodiak, Co: Kodiak Island, AK 99619-5000  
Landholding Agency: DOT  
Property Number: 879210133  
Status: Excess

Reason: Secured area, within airport runway  
clear zone, within 2000 ft. of flammable or  
explosive material.

#### California

Naval Reserve Cntr.—#N62117  
3100 Monte Diablo Avenue  
Stockton, Co: San Joaquin, CA 95203-  
Landholding Agency: GSA  
Property Number: 549210021  
Status: Excess  
Reason: Within airport runway clear zone,  
other

Comment: Extensive deterioration  
GSA Number: 9-N-CA-1305.

Bldg. 10, USCG Support Center  
Coast Guard Island  
Alameda, Co: Alameda, CA 94501-5100  
Landholding Agency: DOT  
Property Number: 879210134  
Status: Excess  
Reason: Secured area.

#### Colorado

Alameda Facility  
350 S. Santa Fe Drive  
Denver, Co: Denver, CO 80223-  
Landholding Agency: DOT  
Property Number: 879010014  
Status: Unutilized  
Reason: Other environmental  
Comment: Contamination.

#### Florida

Bldg. #3, Recreation Cottage  
USCG Station  
Marathon, Co: Monroe, FL 33050-  
Landholding Agency: DOT  
Property Number: 879210008  
Status: Unutilized  
Reason: Secured area, floodway.

Bldg. 103, Trumbo Point  
Key West, Co: Monroe, FL 33040-  
Landholding Agency: DOT  
Property Number: 879230001  
Status: Unutilized  
Reason: Floodway, secured area.

LORAN "A" Station  
Radio Beacon Hobe Sound  
Jupiter Island, Co: Martin, FL  
Landholding Agency: DOT  
Property Number: 879230003  
Status: Unutilized  
Reason: Other  
Comment: Extensive deterioration.

#### Georgia

Chapel Bldg. #319  
Northwest Regional Hospital

1305 Redmond Road  
Rome, Co: Floyd, GA 30165-  
Landholding Agency: GSA  
Property Number: 549220002  
Status: Excess  
Reason: Other  
Comment: Inaccessible  
GSA Number: 4-D-GA-0007A.

#### Kentucky

Spring House  
Kentucky River Lock and Dam No. 1  
Highway 320  
Carrollton, Co: Carroll, KY 41008-  
Landholding Agency: COE  
Property Number: 219040418  
Status: Unutilized  
Reason: Other  
Comment: Spring house.

Building  
Kentucky River Lock and Dam No. 4  
1021 Kentucky Avenue  
Frankfort, Co: Franklin, KY 40601-9999  
Landholding Agency: COE  
Property Number: 219040417  
Status: Unutilized  
Reason: Other  
Comment: Coal storage.

Building  
Kentucky River Lock and Dam No. 4  
1021 Kentucky Avenue  
Frankfort, Co: Franklin, KY 40601-9999  
Landholding Agency: COE  
Property Number: 219040418  
Status: Unutilized  
Reason: Other  
Comment: Coal storage.

Barn  
Kentucky River Lock and Dam No. 3  
Highway 561  
Pleasureville, Co: Henry, KY 40057-  
Landholding Agency: COE  
Property Number: 219040419  
Status: Underutilized  
Reason: Other  
Comment: 110 year old barn with crumbled  
foundation.

Tract 111—Building  
Martins Fork Lake  
Smith, Co: Harlan, KY 40867-  
Location: 13 miles southeast of Harlan on  
Highway 987.  
Landholding Agency: COE  
Property Number: 319010062  
Status: Unutilized  
Reason: Floodway.

Latrine  
Kentucky River Lock and Dam Number 3  
Highway 561  
Pleasureville, Co: Henry, KY 40057-  
Landholding Agency: COE  
Property Number: 319040009  
Status: Unutilized  
Reason: Other  
Comment: Detached latrine.

6-Room Dwelling  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Location: Off State Hwy. 369, which runs off  
of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120010  
Status: Unutilized  
Reason: Floodway.



2-Car Garage  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Location: Off State Hwy. 369, which runs off  
of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120011  
Status: Unutilized  
Reason: Floodway.

Office and Warehouse  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Location: Off State Hwy. 369, which runs off  
of Western Ky. Parkway  
Landholding Agency: COE  
Property Number: 319120012  
Status: Unutilized  
Reason: Floodway.

2 Pit Toilets  
Green River Lock and Dam No. 3  
Rochester, Co: Butler, KY 42273-  
Landholding Agency: COE  
Property Number: 319120013  
Status: Unutilized  
Reason: Floodway.

#### Michigan

Bldg. 402, U.S. Air Station  
Traverse City, Co: Grand Traverse, MI 49684-  
3586  
Landholding Agency: DOT  
Property Number: 879220001  
Status: Unutilized  
Reason: Other  
Comment: Extensive deterioration.

#### Missouri

Building-Stockton Lake Project  
Old Mill Area  
(See County), Co: Cedar, MO 65785-  
Landholding Agency: COE  
Property Number: 219040414  
Status: Unutilized  
Reason: Floodway.  
Bldg. 67, Storage Bunker  
2000 East 95th Street  
Kansas City, Co: Jackson, MO 64131-  
Landholding Agency: Energy  
Property Number: 419220004  
Status: Unutilized  
Reason: Floodway.

#### New Mexico

Cochiti Lake Project Office  
Pena Blanca, Co: Sandoval, NM 87041-  
Location: 30 miles from Santa Fe, 45 miles  
from Albuquerque  
Landholding Agency: COE  
Property Number: 319011505  
Status: Underutilized  
Reason: Secured area.

#### New York

Bldg. 8  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120013  
Status: Excess  
Reason: Other  
Comment: Electrical substation  
GSA Number: 2-N-NY-797.

Bldg. 7  
Naval Station New York  
207 Flushing Avenue

Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120014  
Status: Excess  
Reason: Other  
Comment: Electrical substation  
GSA Number: 2-N-NY-797.

Bldg. R450  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120038  
Status: Excess  
Reason: Other  
Comment: Electrical substation  
GSA Number: 2-N-NY-797.

Hospital Area Steam Tunnel  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120045  
Status: Excess  
Reason: Other  
Comment: Structurally unsound  
GSA Number: 2-N-NY-797

North Street Steam Tunnel  
Naval Station New York  
207 Flushing Avenue  
Brooklyn, Co: Kings, NY 11251-  
Landholding Agency: GSA  
Property Number: 549120046  
Status: Excess  
Reason: Other  
Comment: Structurally unsound  
GSA Number: 2-N-NY-797

#### Puerto Rico

Mona Island  
Punta Este, Co: Mona Island, PR  
Landholding Agency: GSA  
Property Number: 879010004  
Status: Excess  
Reason: Other  
Comment: Inaccessible  
GSA Number: 2NPR0490

#### Tennessee

Bldg. 204  
Cordell Hull Lake and Dam Project.  
Defeated Creek Recreation Area  
Carthage, Co: Smith, TN 37030-  
Location: US Highway 85  
Landholding Agency: COE  
Property Number: 319011499  
Status: Unutilized  
Reason: Floodway  
Track 2618 (Portion)  
Cordell Hull Lake and Dam Project  
Roaring River Recreation Area  
Gainsboro, Co: Jackson, TN 38562-  
Location: TN Highway 135  
Landholding Agency: COE  
Property Number: 319011503  
Status: Underutilized  
Reason: Floodway.

Water Treatment Plant  
Dale Hollow Lake & Dam Project  
Obey River Park, State Hwy 42  
Livingston, Co: Clay, TN 38351-  
Landholding Agency: COE  
Property Number: 319140011  
Status: Excess  
Reason: Other

Comment: Water treatment plant.  
Water Treatment Plant  
Dale Hollow Lake & Dam Project  
Lillydale Recreation Area, State Hwy 53  
Livingston, Co: Clay, TN 38351-  
Landholding Agency: COE  
Property Number: 319140012  
Status: Excess  
Reason: Other  
Comment: Water treatment plant.  
Water Treatment Plant  
Dale Hollow Lake & Dam Project  
Willow Grove Recreation Area, Hwy No. 53  
Livingston, Co: Clay, TN 38351-  
Landholding Agency: COE  
Property Number: 319140013  
Status: Excess  
Reason: Other  
Comment: Water treatment plant.

#### Texas

Bldg. 18  
Fort Point  
Galveston Harbor and Channel Project  
Galveston, Co: Galveston, TX 77550-  
Landholding Agency: COE  
Property Number: 319110033  
Status: Unutilized  
Reason: Secured area.

Bldg. 19  
Fort Point  
Galveston Harbor and Channel Project  
Galveston, Co: Galveston, TX 77550-  
Landholding Agency: COE  
Property Number: 319110034  
Status: Unutilized  
Reason: Secured area.

Bldg. 20  
Fort Point  
Galveston Harbor and Channel Project  
Galveston, Co: Galveston, TX 77550-  
Landholding Agency: COE  
Property Number: 319110035  
Status: Unutilized  
Reason: Secured area.

Bldg. 21  
Fort Point  
Galveston Harbor and Channel Project  
Galveston, Co: Galveston, TX 77550-  
Landholding Agency: COE  
Property Number: 319110036  
Status: Unutilized  
Reason: Secured area.

Bldg. 22  
Fort Point  
Galveston Harbor and Channel Project  
Galveston, Co: Galveston, TX 77550-  
Landholding Agency: COE  
Property Number: 319110037  
Status: Unutilized  
Reason: Secured area.

#### Vermont

Depot Street  
Downtown at the Waterfront  
Burlington, Co: Chittenden, VT 05401-5226  
Landholding Agency: DOT  
Property Number: 879220003  
Status: Excess  
Reason: Floodway.

#### Virginia

Bldg.—Group Eastern Shores  
South Main Street



Chincoteague, Co: Accomack, VA 23336-1510  
Landholding Agency: DOT  
Property Number: 879230002  
Status: Unutilized  
Reason: Secured area.

#### Land (by State)

##### Alaska

Nike Site, Tract 104  
Jig Battery "D"  
Eielson Defense Area  
Fairbanks, Co: Fairbanks, AK 99701-  
Landholding Agency: GSA  
Property Number: 549120001  
Status: Excess  
Reason: Other  
Comment: Property is landlocked  
GSA Number: 9-D-AK-506-AD.  
Portion—Gibson Cove  
1211 Gibson Cove Road  
Kodiak, Co: Kodiak Island, AK 99615-  
Landholding Agency: GSA  
Property Number: 549220011  
Status: Excess  
Reason: Other  
Comment: Inaccessible  
GSA Number: 9-C-AK-573.

##### Arizona

11.217 Acre Site  
Davis-Monthan AFB  
Tucson, Co: Pima, AZ 85707-5000  
Landholding Agency: GSA  
Property Number: 549210020  
Status: Excess  
Reason: Floodway  
GSA Number: 9-GR1-AZ-437HHH, 9-GR2-AZ-437Y.

##### California

Portion, Travis AFB  
6 miles southeast of Vacaville  
Travis AFB Co: Solano CA 94535-  
Landholding Agency: GSA  
Property Number: 549220012  
Status: Surplus  
Reason: Floodway  
GSA Number: 9-D-CA-499L.

##### Colorado

Sunset Canyon Field Station  
Boulder, Co: Boulder, CO 80302-  
Location: 5 miles west of Wall Street on  
County Road 118  
Landholding Agency: GSA  
Property Number: 549030019  
Status: Excess  
Reason: Floodway  
GSA Number: 8-C-CO-602

##### Georgia

(P) Dobbins AFB/(P) NAS Atlanta  
N.E. Quadrant of Intersection between  
Fairground & South Cobb Drive  
Marietta, Co: Cobb, GA 30060-  
Landholding Agency: GSA  
Property Number: 549140001  
Status: Surplus  
Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 4-GR-GA-557 & 4-GR-GA-587A.

##### Kentucky

Tract 4626  
Barkley, Lake, Kentucky and Tennessee

Donaldson Creek Launching Area  
Cadiz, Co: Trigg, KY 42211-  
Location: 14 miles from US Highway 68.  
Landholding Agency: COE  
Property Number: 319010030  
Status: Underutilized  
Reason: Floodway.

Tract AA-2747  
Wolf Creek Dam and Lake Cumberland  
US Hwy. 27 to Blue John Road  
Burnside, Co: Pulaski, KY 42519-  
Landholding Agency: COE  
Property Number: 319010038  
Status: Underutilized  
Reason: Floodway.

Tract AA-2726  
Wolf Creek Dam and Lake Cumberland  
KY Hwy. 80 to Route 769  
Burnside, Co: Pulaski, KY 42519-  
Landholding Agency: COE  
Property Number: 319010039  
Status: Underutilized  
Reason: Floodway.

Tract 1358  
Barkley Lake, Kentucky and Tennessee  
Eddyville Recreation Area  
Eddyville, Co: Lyon, KY 42038-  
Location: US Highway 62 to state Highway 93  
Landholding Agency: COE  
Property Number: 319010043  
Status: Excess  
Reason: Floodway.

Red River Lake Project  
Stanton Co: Powell, KY 40380-  
Location: Exit Mr. Parkway at the Stanton  
and Slade Interchange, then take SR Hand  
15 north to SR 813.

Landholding Agency: COE  
Property Number: 319011684  
Status: Unutilized  
Reason: Floodway.

Barren River Lock & Dam No. 1  
Richardsville Co: Warren, KY 42270-  
Landholding Agency: COE  
Property Number: 319120008  
Status: Unutilized  
Reason: Floodway.

Green River Lock & Dam No. 3  
Rochester Co: Butler, KY 42273-  
Location: Off State Hwy. 369, which runs off  
of Western Kentucky Parkway

Landholding Agency: COE  
Property Number: 319120009  
Status: Unutilized  
Reason: Floodway.

Green River Lock & Dam No. 4  
Woodbury Co: Butler, KY 42288-  
Location: Off State Hwy. 403, which is off  
State Hwy 231

Landholding Agency: COE  
Property Number: 319120014  
Status: Underutilized  
Reason: Floodway.

Green River Lock & Dam No. 5  
Readville Co: Butler, KY 42275-  
Location: Off State Highway 185  
Landholding Agency: COE  
Property Number: 319120015  
Status: Unutilized  
Reason: Floodway.

Green River Lock & Dam No. 6  
Brownville Co: Edmonson, KY 42210-  
Location: Off State Highway 259

Landholding Agency: COE  
Property Number: 319120016  
Status: Underutilized  
Reason: Floodway.  
Vacant land west of locksite  
Greenup Locks & Dam  
5121 New Dam Road  
Rural Co: Greenup, KY 41144-  
Landholding Agency: COE  
Property Number: 319120017  
Status: Unutilized  
Reason: Floodway.  
E.C. Clements Job Corps Cntr.  
1 Mile East of Morganfield, KY.  
Morganfield, Co: Union, KY 42437-  
Landholding Agency: GSA  
Property Number: 549120002  
Status: Excess  
Reason: Within 2,000 ft. of flammable or  
explosive material within airport runway  
clear zone  
GSA Number: 4-L-KY-432-E.

##### Louisiana

Land  
Louisiana Army Ammunition Plant  
Doyline Co: Webster, LA  
Landholding Agency: GSA  
Property Number: 219013923  
Status: Excess  
Reason: Other  
Comment: Barrow pit, predominately under  
water  
GSA Number: 7-D-LA-0435D.

##### Michigan

Middle Marker Facility  
Ypsilanti Co: Washtenaw, MI 48198-  
Location: 549 ft. north of intersection of  
Coolidge and Bradley Ave. on east side of  
street  
Landholding Agency: DOT  
Property Number: 879120006  
Status: Unutilized  
Reason: Within airport runway clear zone.

##### Minnesota

Parcel G  
Pine River  
Cross Lake Co: Crow Wing, MN 56442-  
Location: 3 miles from city of Cross Lake  
between Highways 6 and 371.  
Landholding Agency: COE  
Property Number: 319011037  
Status: Excess  
Reason: Other  
Comment: Highway right of way.

##### Mississippi

Parcel 1  
Grenada Lake  
Section 20  
Grenada Co: Grenada, MS 38901-0903  
Landholding Agency: COE  
Property Number: 319011018  
Status: Underutilized  
Reason: Within airport runway clear zone.

##### Missouri

Stockton Public Use Area  
Stockton Lake  
Stockton Co: Cedar, MO 65785-0632  
Location: Adjacent to and east of Stockton,  
MO.  
Landholding Agency: COE



Property Number: 319011471  
 Status: Underutilized  
 Reason: Floodway.  
 Smith's Fork Park  
 Smithville Lake  
 Smithville, Co: Clay, MO 64089-  
 Location: Within Smithville Lake water  
 resource project downstream from dam,  
 adjoins Smithville.  
 Landholding Agency: COE  
 Property Number: 319011473  
 Status: Underutilized  
 Reason: Floodway.  
 Old Mill Area  
 Stockton Lake  
 Stockton, Co: Cedar, MO 65785-0632  
 Location: Below Stockton Lake Dam on right  
 bank of Outlet Channel/SAC River.  
 Approximately 2 miles from Stockton.  
 Landholding Agency: COE  
 Property Number: 319011477  
 Status: Underutilized  
 Reason: Floodway.  
 Ditch 19, Item 2, Track No. 230  
 St. Francis Basin Project  
 2½ miles west of Malden Co: Dunklin MO  
 Landholding Agency: COE  
 Property Number: 319130001  
 Status: Underutilized  
 Reason: Floodway.

#### North Carolina

Land  
 Atlantic Intracoastal Waterway  
 (See County), Co: Corrituck, NC  
 Location: Near old Coinjack Bridge.  
 Landholding Agency: COE  
 Property Number: 319011537  
 Status: Underutilized  
 Reason: Floodway.

#### Ohio

Ohio River  
 New Cumberland Lock and Dam  
 Glasgow, Co: Beaver, OH  
 Landholding Agency: COE  
 Property Number: 319011560  
 Status: Underutilized  
 Reason: Floodway.  
 Ohio River  
 Pike Island Lock and Dam  
 RD #1, Box 33  
 Tiltonsville, Co: Jefferson, OH  
 Landholding Agency: COE  
 Property Number: 319011561  
 Status: Underutilized  
 Reason: Floodway.

#### Pennsylvania

Land  
 Raystown Lake  
 Huntingdon, Co: Huntingdon, PA  
 Location: Downstream of Raystown Lake.  
 Landholding Agency: COE  
 Property Number: 219040420  
 Status: Excess  
 Reason: Other  
 Comment: Property landlocked.  
 Lock and Dam #7  
 Monongahela River  
 Greensboro, Co: Greene, PA  
 Location: Left hand side of entrance roadway  
 to project.  
 Landholding Agency: COE  
 Property Number: 319011564

Status: Underutilized  
 Reason: Floodway.  
 Land—Tioga-Hammond Lakes  
 Mansfield, Co: Tioga, PA 16933-  
 Location: 2 miles northeast of Mansfield on  
 State Route 58044  
 Landholding Agency: GSA  
 Property Number: 319120001  
 Status: Excess  
 Reason: Floodway.  
 GSA Number: 4-D-PA-0699G.

#### Tennessee

McClure Bend  
 Cordell Hull Lake and Reservoir  
 Carthage, Co: Smith, TN 37030-  
 Location: Highway 85 to McClure Bend Road.  
 Landholding Agency: COE  
 Property Number: 219040412  
 Status: Underutilized  
 Reason: Floodway.  
 Brooks Bend  
 Cordell Hull Lake and Reservoir  
 Highway 85 to Brooks Bend Road  
 Gainesboro, Co: Jackson, TN 38562-  
 Location: Tracts 800, 802-806, 835-837, 900-  
 902, 1000-10003, 1025  
 Landholding Agency: COE  
 Property Number: 219040413  
 Status: Underutilized  
 Reason: Floodway.  
 Cheatham Lock and Dam  
 Highway 12  
 Ashland City, Co: Cheatham, TN 37015-  
 Location: Tracts E-513, E-512-1 and E-512-2  
 Landholding Agency: COE  
 Property Number: 219040415  
 Status: Underutilized  
 Reason: Floodway.  
 Tract 6737  
 Blue Creek Recreation Area  
 Barkley Lake, Kentucky and Tennessee  
 Dover, Co: Stewart, TN 37058-  
 Location: U.S. Highway 70/TN Highway 761  
 Landholding Agency: COE  
 Property Number: 319011478  
 Status: Underutilized  
 Reason: Floodway.  
 Tracts 3102, 3105, and 3106  
 Brimstone Launching Area  
 Cordell Hull Lake and Dam Project  
 Gainesboro, Co: Jackson, TN 38562-  
 Location: Big Bottom Road  
 Landholding Agency: COE  
 Property Number: 319011479  
 Status: Excess  
 Reason: Floodway.  
 Tract 3507  
 Proctor Site  
 Cordell Hull Lake and Dam Project  
 Celina, Co: Clay, TN 38551-  
 Location: TN Highway 52  
 Landholding Agency: COE  
 Property Number: 319011480  
 Status: Unutilized  
 Reason: Floodway.  
 Tract 3721  
 Obey  
 Cordell Hull Lake and Dam Project  
 Celina, Co: Clay, TN 38551-  
 Location: TN Highway 53  
 Landholding Agency: COE  
 Property Number: 319011481  
 Status: Unutilized  
 Reason: Floodway.

Tracts 608, 609, 611 and 612  
 Sullivan Bend Launching Area  
 Cordell Hull Lake and Dam Project  
 Carthage, Co: Smith, TN 37030-  
 Location: Sullivan Bend Road  
 Landholding Agency: COE  
 Property Number: 319011482  
 Status: Underutilized  
 Reason: Floodway.  
 Tract 920  
 Indian Creek Camping Area  
 Cordell Hull Lake and Dam Project  
 Granville, Co: Smith, TN 38564-  
 Location: TN Highway 53  
 Landholding Agency: COE  
 Property Number: 319011483  
 Status: Underutilized  
 Reason: Floodway.  
 Tracts 1710, 1716 and 1703  
 Flynns Lick Launching Ramp  
 Cordell Hull Lake and Dam Project  
 Gainesboro, Co: Jackson, TN 38562-  
 Location: Whites Bend Road  
 Landholding Agency: COE  
 Property Number: 319011484  
 Status: Underutilized  
 Reason: Floodway.  
 Tract 1810  
 Wartrace Creek Launching Area  
 Cordell Hull Lake and Dam Project  
 Gainesboro, Co: Jackson, TN 38551-  
 Location: TN Highway 85  
 Landholding Agency: COE  
 Property Number: 319011485  
 Status: Underutilized  
 Reason: Floodway.  
 Tract 2524  
 Jennings Creek  
 Cordell Hull Lake and Dam Project  
 Gainesboro, Co: Jackson, TN 38562-  
 Location: TN Highway 85  
 Landholding Agency: COE  
 Property Number: 319011486  
 Status: Unutilized  
 Reason: Floodway.  
 Tracts 2905 and 2907  
 Webster  
 Cordell Hull Lake and Dam Project  
 Gainesboro, Co: Jackson, TN 38551-  
 Location: Big Bottom Road  
 Landholding Agency: COE  
 Property Number: 319011487  
 Status: Unutilized  
 Reason: Floodway.  
 Tracts 2200 and 2201  
 Gainesboro Airport  
 Cordell Hull Lake and Dam Project  
 Gainesboro, Co: Jackson, TN 38562-  
 Location: Big Bottom Road  
 Landholding Agency: COE  
 Property Number: 319011488  
 Status: Underutilized  
 Reason: Within airport runway clear zone,  
 floodway.  
 Tracts 710C and 712C  
 Sullivan Island  
 Cordell Hull Lake and Dam Project  
 Carthage, Co: Smith, TN 37030-  
 Location: Sullivan Bend Road  
 Landholding Agency: COE  
 Property Number: 319011489  
 Status: Unutilized  
 Reason: Floodway.  
 Tract 2403, Hensley Creek



Cordell Hull Lake and Dam Project  
Gainesboro, Co: Jackson, TN 38562-  
Location: TN Highway 85  
Landholding Agency: COE  
Property Number: 319011490  
Status: Unutilized  
Reason: Floodway.

Tracts 2117C, 2118 and 2120  
Cordell Hull Lake and Dam Project  
Trace Creek  
Gainesboro, Co: Jackson, TN 38562-  
Location: Brooks Ferry Road  
Landholding Agency: COE  
Property Number: 319011491  
Status: Unutilized  
Reason: Floodway.

Tracts 424, 425 and 426  
Cordell Hull Lake and Dam Project  
Stone Bridge  
Carthage, Co: Smith, TN 37030-  
Location: Sullivan Bend Road  
Landholding Agency: COE  
Property Number: 319011492  
Status: Unutilized  
Reason: Floodway.

Tract 517  
J. Percy Priest Dam and Reservoir  
Suggs Creek Embayment  
Nashville, Co: Davidson, TN 37214-  
Location: Interstate 40 to S. Mount Juliet  
Road  
Landholding Agency: COE  
Property Number: 319011493  
Status: Underutilized  
Reason: Floodway.

Tract 1811  
West Fork Launching Area  
Smyrna, Co: Rutherford, TN 37167-  
Location: Florence Road near Enon Springs  
Road  
Landholding Agency: COE  
Property Number: 319011494  
Status: Underutilized  
Reason: Floodway.

Tract 1504  
J. Perry Priest Dam and Reservoir  
Lamon Hill Recreation Area  
Smyrna, Co: Rutherford, TN 37167-  
Location: Lamon Road  
Landholding Agency: COE  
Property Number: 319011495  
Status: Underutilized  
Reason: Floodway.

Tract 1500  
J. Perry Priest Dam and Reservoir  
Pools Knob Recreation  
Smyrna, Co: Rutherford, TN 37167-  
Location: Jones Mill Road  
Landholding Agency: COE  
Property Number: 319011496  
Status: Underutilized  
Reason: Floodway.

Tracts 245, 257, and 256  
J. Perry Priest Dam and Reservoir  
Cook Recreation Area  
Nashville, Co: Davidson, TN 37214-  
Location: 2.2 miles south of Interstate 40 near  
Saunders Ferry Pike.  
Landholding Agency: COE  
Property Number: 319011497  
Status: Underutilized  
Reason: Floodway.

Tracts 107, 109 and 110  
Cordell Hull Lake and Dam Project

Two Prong  
Carthage, Co: Smith, TN 37030-  
Location: US Highway 85  
Landholding Agency: COE  
Property Number: 319011498  
Status: Unutilized  
Reason: Floodway.  
Tracts 2919 and 2929  
Cordell Hull Lake and Dam Project  
Sugar Creek  
Gainesboro, Co: Jackson, TN 38562-  
Location: Sugar Creek Road  
Landholding Agency: COE  
Property Number: 319011500  
Status: Unutilized  
Reason: Floodway.

Tracts 1218 and 1204  
Cordell Hull Lake and Dam Project  
Granville-Alvin Yourk Road  
Gainesboro, Co: Jackson, TN 38564-  
Landholding Agency: COE  
Property Number: 319011501  
Status: Unutilized  
Reason: Floodway.

Tract 2100  
Cordell Hull Lake and Dam Project  
Galbreaths Branch  
Gainesboro, Co: Jackson, TN 38562-  
Location: TN Highway 53  
Landholding Agency: COE  
Property Number: 319011502  
Status: Unutilized  
Reason: Floodway.

Tract 104 et. al.  
Cordell Hull Lake and Dam Project  
Horseshoe Bend Launching Area  
Carthage, Co: Smith, TN 37030-  
Location: Highway 70N  
Landholding Agency: COE  
Property Number: 319011504  
Status: Underutilized  
Reason: Floodway.

Tracts 510, 511, 513 and 514  
J. Percy Priest Dam and Reservoir Project  
Lebanon, Co: Wilson, TN 37087-  
Location: Vivrett Creek Launching Area,  
Alvin Sperry Road  
Landholding Agency: COE  
Property Number: 319120007  
Status: Underutilized  
Reason: Floodway.

Tract A-142, Old Hickory Beach  
Old Hickory Blvd.  
Old Hickory, Co: Davidson, TN 37138-  
Landholding Agency: COE  
Property Number: 319130008  
Status: Underutilized  
Reason: Floodway.

#### Texas

Tracts 104, 105-1, 105-2 & 118  
Joe Pool Lake  
(See County), Co: Dallas, TX  
Landholding Agency: COE  
Property Number: 319010397  
Status: Underutilized  
Reason: Floodway.  
Part of Tract 201-3  
Joe Pool Lake  
(See County), Co: Dallas, TX  
Landholding Agency: COE  
Property Number: 319010398  
Status: Underutilized  
Reason: Floodway.

Part of Tract 323

Joe Pool Lake  
(See County), Co: Dallas, TX  
Landholding Agency: COE  
Property Number: 319010399  
Status: Underutilized  
Reason: Floodway.  
Tract 702-3  
Granger Lake  
Route 1, Box 172  
Granger, Co: Williamson, TX 76530-9801  
Landholding Agency: COE  
Property Number: 319010401  
Status: Unutilized  
Reason: Floodway.

Tract 706  
Granger Lake  
Route 1, Box 172  
Granger, Co: Williamson, TX 76530-9801  
Landholding Agency: COE  
Property Number: 319010402  
Status: Unutilized  
Reason: Floodway.

#### Virginia

0.07 Acre, Dismal Swamp Canal  
West of U.S. Rt. 17  
Chesapeake, VA  
Landholding Agency: COE  
Property Number: 319210012  
Status: Unutilized  
Reason: Other  
Comment: Inaccessible.  
(P) Defense General Supply Ctr  
Falling Creek Reservoir  
Richmond, Co: Chesterfield, VA 23297-5000  
Landholding Agency: GSA  
Property Number: 549220009  
Status: Excess  
Reason: Floodway  
GSA Number: 4-D-VA-565-C.

#### West Virginia

Ohio River  
Pike Island Locks and Dam  
Buffalo Creek  
Wellsburg, Co: Brooke, WV  
Landholding Agency: COE  
Property Number: 319011529  
Status: Unutilized  
Reason: Floodway.  
Morgantown Lock and Dam  
Box 3 RD #2  
Morgantown, Co: Monongahalia, WV 26505-  
Landholding Agency: COE  
Property Number: 319011530  
Status: Unutilized  
Reason: Floodway.  
London Lock and Dam  
Route 60 East  
Rural, Co: Kanawha, WV 25126-  
Location: 20 miles east of Charleston, W.  
Virginia  
Landholding Agency: COE  
Property Number: 319011690  
Status: Unutilized  
Reason: Other  
Comment: .03 acres; very narrow strip of land  
located too close to busy highway.

[FR Doc. 92-19832 Filed 8-20-92; 8:45 am]

BILLING CODE 4210-29-M



## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[MT-930-4214-11; MTM 79374]

## Opening of National Forest System Lands in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

**SUMMARY:** The temporary 2-year segregation of a proposed withdrawal of 220 acres of National Forest System land for the Crystal Park Recreational Mineral Collection Area expired August 1, 1992, and the land opened to mining. It has been and remains open to surface entry and mineral leasing.

EFFECTIVE DATE: August 1, 1992.

## FOR FURTHER INFORMATION CONTACT:

James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Withdrawal was published in the Federal Register, 55 FR 31451-52, August 2, 1990, which segregated the land described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System land. The 2-year segregation expired August 1, 1992. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

## Principal Meridian, Montana

Beaverhead National Forest

T. 4 S., R. 12 W.,

Sec. 16, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 17, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$ S E $\frac{1}{4}$ .

The area described contains 220 acres in Beaverhead County.

At 9 a.m. on August 1, 1992, the land was opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 6, 1992.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92-19956 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-DN-M

[CA-050-282-3110-10-B008; CACA 26604]

## Realty Action; Public Lands in Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; Disposal of public lands in Tehama County, California through exchange.

**SUMMARY:** The following described public lands are being considered for exchange to American Land Conservancy, under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

**Note:** Not all lands identified below may be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

M.D.M., T. 26 N., R. 8 W.,

Sec. 22, W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;Sec. 31, Lots 3, 4; E $\frac{1}{2}$ SW $\frac{1}{4}$ ;Sec. 34, NW $\frac{1}{4}$ , N $\frac{1}{2}$ S $\frac{1}{2}$ .

Containing 600 acres, more or less.

**SUPPLEMENTARY INFORMATION:** This notice deals exclusively with the public lands listed above. Notice of Realty Action dated June 20, 1991, published in Volume 56, No. 119, addressed the offered (private) lands to be acquired by the Bureau of Land Management in the exchange. The purpose of disposing of the lands listed above is to enhance the Bureau's management of public land by providing recreation opportunities, and wildlife and riparian habitat at the mouth of the Mattole River, Humboldt County, California; and by simplifying management efforts in the Tehama County area by disposing of scattered tracts of public land. This exchange meets Bureau land use planning goals as outlined in the Redding Resource Management Plan. Value of the public lands disposed in Tehama County in excess of the value of the private lands acquired in the Mattole Estuary will be used to acquire lands in the Sacramento River Management Area.

Lands to be transferred from the United States will be evaluated in

accordance with the National Environmental Protection Act, and will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

(2) Any authorized land uses, such as rights-of-ways, will be identified as prior existing rights.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. These lands were previously segregated for exchange by CA 22703; this notice supersedes that action. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location, and entry under the public lands and minerals laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the Federal Register of a termination of the segregation, or two years from the date of this notice, whichever occurs first.

**EFFECTIVE DATE:** On or before October 5, 1992, the public is invited to comment on the proposed exchange. Comments may be sent to the Area manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

**FOR FURTHER INFORMATION CONTACT:** Mike Truden, Realty Specialist, at the address above.

Michael Truden,  
Acting Area Manager.

[FR Doc. 92-19985 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-930-6332-10; GP2-388]

## Overnight Camping Restriction Order Established; Molalla River, Clackamas Resource Area, Salem District

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

**ACTION:** Overnight camping restriction order established; Molalla River, Clackamas Resource Area, Salem District.

**SUMMARY:** Establish an overnight camping restriction order for areas on BLM-administered lands along the Molalla River, Clackamas County, Oregon. Overnight camping will be



prohibited within ¼ mile of the river's average high water mark except in designated camping areas or camp ground.

Under special circumstances, the area manager may authorize camping within closed areas. However, the authorization of camping within closed areas is a discretionary matter and must be granted prior to the overnight camping activity. Requests for camping within closed areas must be submitted in writing 2 weeks prior to the proposed activity and will be considered on a case-by-case basis.

A copy of this restriction order is conspicuously posted at the Salem District Office, 1717 Fabry Road S.E., Salem, OR., and at Bureau of Land Management sites where other such notices are posted.

This restriction order does not apply to any Federal, State, or local officer, or any member of an organized rescue or fire fighting force actively involved in the performance of an official duty. It does not apply to recreation uses or activities other than overnight camping. It is an interim restriction pending the completion of the Molalla River Management Plan.

**EFFECTIVE DATE:** September 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Area Manager, Clackamas Resource Area, Salem District Office, Bureau of Land Management, (503) 375-5646.

**SUPPLEMENTARY INFORMATION:** This restriction order is necessary to:

(1) Preclude any individual or group from camping along the banks of the Molalla River outside of designated camping areas or campgrounds designed for such use.

(2) Prevent or reduce unacceptable sanitary and solid waste disposal problems; reduce nonpoint source pollution to the Molalla River, a municipal water source.

(3) Prevent or reduce unacceptable riparian vegetation damage or bank erosion along the river.

(4) Preserve and protect the natural, cultural, and scenic resource values of the river corridor.

(5) Reduce the incidence of human-caused fires, littering, vandalism, and illegal dumping.

Authority for implementing this restriction order is contained in the Code of Federal Regulations, title 43, chapter II part 8360, subparts 8364 and 8365. Any person failing to comply with the overnight camping restriction described in this notice may be subject to a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months as specified in the Code of Federal

Regulations, title 43, chapter II, part 8360 and 8360.0-7.

This restriction order is effective September 1, 1992, and shall remain in effect unless revised, revoked, or amended.

**Mark Lawrence,**

*Acting Salem District Manager.*

[FR Doc. 92-19986 Filed 8-20-92; 8:45 am]

**BILLING CODE 4310-33-M**

[ID-942-02-4730-12]

#### **Idaho: Filing of Plats of Survey; Idaho**

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., August 13, 1992.

The supplemental plat prepared to show the subdivision of original lots 3 and 4 in section 3, T. 19 N., R. 6 E., Boise Meridian, Idaho, was accepted August 13, 1992.

The supplemental plat prepared to show a subdivision of certain lots in sections 25, 26, 34, and 35, T. 20 N., R. 6 E., Boise Meridian, Idaho, was accepted August 13, 1992.

These plats were prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 13, 1992.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 92-19984 Filed 8-20-92; 8:45 am]

**BILLING CODE 4310-GG-M**

#### **National Park Service**

##### **Intent To Prepare a Draft Environmental Impact Statement (DEIS); White-Tailed Deer Management Program, Gettysburg National Military Park, Pennsylvania**

**AGENCY:** Gettysburg National Military Park, National Park Service, U.S. Department of the Interior.

**ACTION:** Notice of intent to prepare a draft environmental impact statement (DEIS).

#### **SUMMARY:**

##### **1. Description of Proposed Action**

The preparation of this DEIS follows the completion of a three-year study of the park's deer population by Pennsylvania State University. The study concluded that extensive resource

damage has resulted from an overpopulation of deer. The study identified the following possible management alternatives for reducing and maintaining satisfactory population levels: trap and transfer, fertility control, reintroduction of predators, fencing, forage manipulation, repellents, public hunting, professional marksman and harvesting by park rangers. The National Park Service is interested in identifying and analyzing the impact and cost of other feasible options for deer management prior to deciding on a specific plan of action. The DEIS will provide this analysis and also respond to all major issues of concern which are identified by the public.

#### **2. Scoping Process**

a. **Public Involvement.** A series of public meetings will be held with time and location to be announced. The public is encouraged to attend and submit their verbal and/or written comments on the proposed EIS. Comments concerning deer management at Gettysburg National Military Park should be received within 30 days of Scoping Meetings. The draft and final EIS will be distributed for comment to all known interested parties and appropriate agencies.

b. **Appropriate concerned agencies.** The environmental review will also include close consultation with all agencies having jurisdiction under law and they will be asked to participate as cooperating entities. The Pennsylvania Game Commission shares responsibility with the National Park Service for deer management within the area of concern.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Joseph W. Gorrell, Acting Regional Director, Mid-Atlantic Region, National Park Service, 143 S. Third Street, Philadelphia, PA 19106, Telephone (215) 597-7013

or

Joseph Cisneros, Superintendent, Gettysburg National Military Park, Gettysburg, PA 17325, Telephone (717) 334-1124.

**Charles P. Clapper, Jr.,**

*Acting Regional Director.*

[FR Doc. 92-20053 Filed 8-20-92; 8:45 am]

**BILLING CODE 4310-70-M**

#### **Petroglyph National Monument Advisory Commission; Notice of Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Petroglyph National Monument



Advisory Commission will be held 2 p.m.-5 p.m., on Friday, September 11, 1992, in the Theater Conference Room at the Catholic Center, St. Joseph's Church on the Rio Grande, 4000 St. Joseph's Place, NW., Albuquerque, New Mexico (I-40 west, right (north) Coors Road, right (east) at third light on St. Joseph's Place).

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101-313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

- Introduction of advisory commission members and guests
- Approval of minutes from May 29, 1992 meeting
- Discussion of Boundary Study—Westland Corporation
- Discussion of General Management Plan
- Discussion of Volunteer Program
- Update on Land Protection Program
- Discussion of City Council Update of Northwest Mesa Area Plan
- Superintendent's Report
- New Business
- Public Comments

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whitesell, Superintendent, Petroglyph National Monument, P.O. Box 1293, Albuquerque, New Mexico 87103, telephone 505/768-3316.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: August 13, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92-20052 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-70-M

### National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in

the National Register were received by the National Park Service before August 8, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 8, 1992.

Beth L. Savage,  
Acting Chief of Registration, National Register.

### ARKANSAS

#### Boone County

- Bergman High School (Public Schools in the Ozarks MPS), Co. Rd. 48, Bergman, 92001203
- Everton School (Public Schools in the Ozarks MPS), Main St., Everton, 92001205
- Valley Springs School (Public Schools in the Ozarks MPS), 1 School St., Valley Springs, 92001204

#### Carroll County

- Berryville Agriculture Building (Public Schools in the Ozarks MPS), S of Freeman Ave., E of Linda St., N of W. College Ave. and W of Ferguson St., Berryville, 92001214
- Berryville Gymnasium (Public Schools in the Ozarks MPS), S. of Freeman Ave., E of Linda St., N of W. College Ave. and W of Ferguson St., Berryville, 92001215
- Dog Branch School, S of US 412, approximately 3 mi. E of Osage, Osage vicinity, 92001177

#### Chicot County

- Epstein, Sam, House (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), 488 Lake Shore Dr., Lake Village, 92001226

New Hope Missionary Baptist Church Cemetery, Historic Section (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), St. Marys St., Lake Village, 92001227

- Tushek, John, Building (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), 108 Main St., Lake Village, 92001225

#### Celburne County

- King, Hugh L., House, 110 W. Spring St., Heber Springs, 92001224

#### Conway County

- Cafeteria Building—Cleveland School (Public Schools in the Ozarks MPS), Co. Rd. 511, Cleveland vicinity, 92001194
- Plumerville School Building (Public Schools in the Ozarks MPS), Arnold St., Plumerville, 92001193

#### Crawford County

- Cedarville School Building (Public Schools in the Ozarks MPS), Co. Rd. 523, Cedarville, 92001217
- Mountainburg High School (Public Schools in the Ozarks MPS), AR 71, Mountainburg, 92001216
- Mulberry Home Economics Building (Public Schools in the Ozarks MPS), Church St., Mulberry, 92001218

### Faulkner County

- Guy High School Gymnasium (Public Schools in the Ozarks MPS), Ar 25, Guy, 92001196
- Guy Home Economics Building (Public Schools in the Ozarks MPS), AR 25, Guy, 92001197
- Liberty School Cafeteria (Public Schools in the Ozarks MPS), AR 36 N of jct. with US 64, Hamlet, 92001195

### Izard County

- Boswell School (Public Schools in the Ozarks MPS), End of Co. Rd. 196, Boswell, 92001178
- Calico Rock Home Economics Building (Public Schools in the Ozarks MPS), 2nd St., Calico Rock, 92001200
- Melbourne Home Economics Building (Public Schools in the Ozarks MPS), School Dr., Melburne, 92001201
- Smith, Sylvester, Farmstead, S of Co. Rd. 10, approximately 3/4 mi. NE of jct. with Co. Rd. 13, Boswell vicinity, 92001222

### Johnson County

- Clarksville High School Building No. 1 (Public Schools in the Ozarks MPS), Main St., Clarksville, 92001202

### Lawrence County

- Smithville Public School Building (Public Schools in the Ozarks MPS), AR 117, Smithville, 92001219

### Logan County

- New Liberty School (Public Schools in the Ozarks MPS), S of AR 22, Liberty, 92001220

### Madison County

- Enterprise School (Public Schools in the Ozarks MPS), SE of jct. of Co. Rds. 8 and 192, Thorney vicinity, 92001192

### Pope County

- Caraway Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), N. Arkansas St., Russellville, 92001213
- Center Valley Well House (Public Schools in the Ozarks MPS), AR 124, Center Valley, 92001206
- Girls' Domestic Science and Arts Building—Arkansas Tech University (Public Schools in the Ozarks MPS), E of N. El Paso St., Russellville, 92001212
- Hughes Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), W. M. St., Russellville, 92001210
- Mountain View School (Public Schools in the Ozarks MPS), AR 326, Russellville, 92001207
- Physical Education Building—Arkansas Tech University (Public Schools in the Ozarks MPS), Jct. of N. El Paso and W. O Sts., SE corner, Russellville, 92001211
- Williamson Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), N. El Paso St., Russellville, 92001208
- Wilson Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), N. El Paso St., Russellville, 92001209

### Pulaski County

- Kahn—Jennings House, 5300 Sherwood St., Little Rock, 92001223



**Sharp County**

*Maxville School Building (Public Schools in the Ozarks MPS), US 167 N of Cave City, Cave City vicinity, 92001199*  
*Poughkeepsie School Building (Public Schools in the Ozarks MPS), AR 58 S of Co. Rd. 137, Poughkeepsie, 92001198*

**Yell County**

*Yell County Courthouse, 209 Union St., Dardanelle, 92001176*

**COLORADO****Mesa County**

*Denver and Rio Grande Western Railroad Depot, 119 Pitkin Ave., Grand Junction, 92001190*

**KANSAS****Dickinson County**

*Abilene Union Pacific Railroad Passenger Depot, Jct. of N. Second St. and Broadway, Abilene, 92001175*

**NEVADA****Elko County**

*Gold Creek Ranger Station, E of Mountain City, Humboldt NF, Mountain City vicinity, 92001187*

**NEW JERSEY****Atlantic County**

*Church of the Redeemer, Jct. of 20th and Atlantic Aves., Longport, 92001179*

**NEW MEXICO****Sandoval County**

*Holiday Mesa Logging Camp (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001181*

*Virgin Canyon Logging Camp No. 1 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001180*

*Virgin Mesa Logging Camp No. 1 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001182*

*Virgin Mesa Logging Camp No. 2 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001183*

*Virgin Mesa Logging Camp No. 3 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001184*

**NORTH CAROLINA****Stanly County**

*Randle House, S side of NC 1802 at jct. with NC 1743, Norwood vicinity, 92001172*

**OKLAHOMA****Wagoner County**

*Rio Grande Ranch Headquarters Historic District, OK 251A, 3 mi. E of Okay, Okay vicinity, 92001191*

**VERMONT****Chittenden County**

*West Milton Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 40 over the Lamoille R., Milton, 92001173*

**Windham County**

*South Newfane Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 26 (Parish Rd.) over the Rock R., Newfane, 92001174*

**VIRGINIA****Alexandria Independent City**

*Town of Potomac, Roughly bounded by Commonwealth Ave., US 1, E. Bellefonte Ave. and Ashby Ave., Alexandria (Independent City), 92001186*

**Norfolk Independent City**

*Center Theater, Jct. of Virginia Beach Blvd. and Llewellyn Ave., Norfolk (Independent City), 92001171*

**WISCONSIN****Columbia County**

*Holsten Family Farmstead, W1391 Weiner Rd., Columbia, 92001189*

**Wood County**

*Purdy, Willard D., Junior High and Vocational School, 110 W. Third St., Marshfield, 92001188.*

[FR Doc. 92-20081 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-70-M

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 731-TA-527 (Final)]

**Extruded Rubber Thread From Malaysia; Commission Determination To Conduct a Portion of the Hearing in Camera**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Closure of a portion of a Commission hearing to the public.

**SUMMARY:** Upon request of respondents in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for August 18, 1992, *in camera*. See Commission rules 207.23(a), 201.13, and 201.35 through 201.39 (19 CFR 207.23(a), 201.13, and 201.35 through 201.39). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rules 201.35(c)(1) and 201.37(b) (19 CFR 201.35(c)(1) and 201.37(b)).

**FOR FURTHER INFORMATION CONTACT:**

Lyle B. Vander Schaaf, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3107. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission believes that good cause exists in this investigation to hold a short portion of the hearing *in camera*. The *in camera* portion of the hearing will be for the purpose of addressing business proprietary information (BPI) as part of respondents' presentation-in-chief, and therefore properly the subject of an *in camera* hearing pursuant to Commission rule 201.36(b)(4) (19 CFR 201.36(b)(4)). In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will include public presentations by petitioner and respondents, with questions from the Commission. After respondents' public presentation, the Commission will hold an *in camera* session, during which time respondents will continue their presentation to the Commission and cover business proprietary information, followed by questioning by the Commissioners and time for rebuttal by petitioners regarding such information. For the *in camera* portion of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO), and who are included on the Commission's APO service list in this investigation. See Commission rule 201.35(b) (19 CFR 201.35(b)). All those planning to attend the *in camera* portion of the hearing should be prepared to present proper identification.

**Authority:** The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Extruded Rubber Thread from Malaysia*, Inv. No. 731-TA-527 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

Issued: August 17, 1992.

By order of the Commission.

Paul R. Bardos,  
Acting Secretary.

[FR Doc. 92-19965 Filed 8-20-92; 8:45 am]

BILLING CODE 7020-02-M



[Investigations Nos. 701-TA-319 through 354 and 731-TA-573 through 620 (Preliminary)]

# **Certain Flat-Rolled Carbon Steel Products**

## **Determinations**

On the basis of the record <sup>1</sup> developed in the subject countervailing duty

investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products <sup>2</sup> that are

alleged to be subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Austria.....			701-TA-336 <sup>1</sup>	
Belgium.....	701-TA-319	701-TA-329 <sup>2</sup>	701-TA-337 <sup>1</sup>	
Brazil.....	701-TA-320	701-TA-330 <sup>3</sup>	701-TA-338	701-TA-347 <sup>3</sup>
France.....	701-TA-321 <sup>1</sup>	701-TA-331	701-TA-339	701-TA-348
Germany.....	701-TA-322	701-TA-332	701-TA-340	701-TA-349
Italy.....	701-TA-323 <sup>4</sup>		701-TA-341 <sup>5</sup>	
Korea.....	701-TA-324 <sup>6</sup>	701-TA-334	701-TA-342	701-TA-350
Mexico.....	701-TA-325			701-TA-351
New Zealand.....				701-TA-352 <sup>7</sup>
Spain.....	701-TA-326		701-TA-344 <sup>2</sup>	
Sweden.....	701-TA-327			701-TA-353 <sup>7</sup>
United Kingdom.....	701-TA-328			

<sup>1</sup> Commissioner Brunsdale dissenting.

<sup>2</sup> Commissioners Rohr, Brunsdale, and Crawford dissenting.

<sup>3</sup> Commissioners Brunsdale and Crawford dissenting.

<sup>4</sup> Commissioner Brunsdale dissenting, Vice Chairman Watson not participating.

<sup>5</sup> Commissioners Rohr and Brunsdale dissenting, Vice Chairman Watson not participating.

<sup>6</sup> Vice Chairman Watson and Commissioners Brunsdale and Crawford dissenting.

<sup>7</sup> Chairman Newquist and Commissioner Brunsdale dissenting.

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of allegedly subsidized imports of the following flat-rolled carbon steel products:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Italy.....		701-TA-333 <sup>1</sup>		
New Zealand.....		701-TA-335	791-TA-343	
Taiwan.....			791-TA-345 <sup>2</sup>	701-TA-354 <sup>3</sup>
United Kingdom.....			791-TA-346 <sup>4</sup>	

<sup>1</sup> Chairman Newquist and Commissioner Nuzum dissenting, Vice Chairman Watson not participating.

<sup>2</sup> Chairman Newquist dissenting, Commissioner Crawford not participating.

<sup>3</sup> Commissioner Crawford not participating.

<sup>4</sup> Chairman Newquist dissenting.

On the basis of the record developed in the subject antidumping investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products that are alleged to be sold in the United States at less than fair value (LTFV):

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Argentina.....			731-TA-597 <sup>1</sup>	
Australia.....				731-TA-612
Austria.....			731-TA-599 <sup>1</sup>	
Belgium.....	731-TA-573	731-TA-588 <sup>2</sup>	731-TA-600 <sup>1</sup>	
Brazil.....	731-TA-574	731-TA-589 <sup>3</sup>	731-TA-601	731-TA-613 <sup>4</sup>
Canada.....	731-TA-575	731-TA-590	731-TA-602	731-TA-614
Finland.....	731-TA-576			
France.....	731-TA-577 <sup>1</sup>	731-TA-591	731-TA-603	731-TA-615
Germany.....	731-TA-578	731-TA-592	731-TA-604	731-TA-616
Italy.....	731-TA-579 <sup>5</sup>		731-TA-605 <sup>6</sup>	

<sup>1</sup> The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> The products covered by the subject investigations are provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21,

7212.29, 7212.30, 7212.40, 7212.50, and 7212.60 of the Harmonized Tariff Schedule of the United States. For a complete description of the products, see the Department of Commerce's initiation notices (57 FR 32970, July 24, 1992, and 57 FR 33488, July 29, 1992).



Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Japan.....		731-TA-594 <sup>1</sup>	731-TA-606	731-TA-617
Korea.....	731-TA-581 <sup>1</sup>	731-TA-595	731-TA-607	731-TA-618
Mexico.....	731-TA-582			731-TA-619
Netherlands.....		731-TA-596 <sup>1</sup>	731-TA-608	
Poland.....	731-TA-583			
Romania.....	731-TA-584			
Spain.....	731-TA-585		731-TA-609 <sup>2</sup>	
Sweden.....	731-TA-586			
United Kingdom.....	731-TA-587			

<sup>1</sup> Commissioner Brunsdale dissenting.

<sup>2</sup> Commissioners Rohr, Brunsdale, and Crawford dissenting.

<sup>3</sup> Commissioners Brunsdale and Crawford dissenting.

<sup>4</sup> Chairman Newquist and Commissioners Brunsdale and Crawford dissenting.

<sup>5</sup> Commissioner Brunsdale dissenting, Vice Chairman Watson not participating.

<sup>6</sup> Commissioners Rohr and Brunsdale dissenting, Vice Chairman Watson not participating.

<sup>7</sup> Vice Chairman Watson and Commissioners Brunsdale and Crawford dissenting.

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of allegedly LTFV imports of the following flat-rolled carbon steel products:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Australia.....			731-TA-598	
Italy.....		731-TA-593 <sup>1</sup>		
Japan.....	731-TA-580			
Taiwan.....			731-TA-610 <sup>4</sup>	731-TA-620 <sup>3</sup>
United Kingdom.....			731-TA-611 <sup>4</sup>	

<sup>1</sup> Chairman Newquist and Commissioner Nuzum dissenting, Vice Chairman Watson not participating.

<sup>2</sup> Chairman Newquist dissenting, Commissioner Crawford not participating.

<sup>3</sup> Commissioner Crawford not participating.

<sup>4</sup> Chairman Newquist dissenting.

### Background

On June 30, 1992, petitions were filed with the Commission and the Department of Commerce by Armco Steel Company, L.P.; Bethlehem Steel Corporation; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Company; LTV Steel Company, Inc.; Lukens Steel Company; National Steel Corporation; Sharon Steel Corporation; USX Corporation/U.S. Steel Group; and WCI Steel, Inc., alleging that industries in the United States are materially injured or threatened with material injury by reason of the above-specified imports. Accordingly, effective June 30, 1992, the Commission instituted the specified countervailing duty and antidumping investigations.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 8, 1992 (57 FR 30230). The conference was held in Washington, DC, on July 21, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 14, 1992. The views of the Commission are contained in USITC Publication 2552 (August 1992), entitled "Certain Flat-rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Determinations of the Commission in Investigations Nos. 701-TA-319-354 and 731-TA-573-620 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: August 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19964 Filed 8-20-92; 8:45 am]

BILLING CODE 7020-02-M



## INTERSTATE COMMERCE COMMISSION

### Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation is Jack Cooper Transport Co., Inc. a Delaware corporation. Its address is 3501 Manchester Trafficway, Kansas City, MO 64129.

2. Wholly owned subsidiaries which will participate in the operations are Equipment Refurbishers, Inc. ("ERI"), a Missouri corporation and Pacific Motor Trucking, a Missouri corporation.

B. 1. Parent corporation and address of principal office: New Process Steel Corporation, P.O. Box 55205, Houston, Texas 77255-5205.

2. Wholly owned subsidiaries which will participate in the operations: New Process Steel International, Inc., d/b/a Maverick Metals. State of incorporation: Texas.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 92-20047 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

### Exemption; CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

[Docket No. AB-55 (Sub-No. 430X)]

CSX Transportation, Inc., has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonment* to abandon a line of railroad between milepost BF-324.95, at Laughlin Junction, and milepost BF-327.85, at Grant Street, a distance of approximately 2.9 miles, in Pittsburgh, Allegheny County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) There is no overhead traffic on the line; (3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under

### Oregon Short Line R. Co.—

*Abandonment—Goshen*, 360 I.C.C. 91(1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on September 20, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by August 31, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 10, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by August 26, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 14, 1992.

<sup>1</sup> A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, Joseph H. Dettmar,  
Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-20046 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 76X)]

### Exemption; Union Pacific Railroad Company—Abandonment Exemption—in Sweetwater County, WY (South Pass Branch)

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonment* to abandon and discontinue service over a portion of the South Pass Branch from milepost 6.50 near Reliance to the end of the line at railroad milepost 9.47 near Winton, a distance of approximately 2.97 miles in Sweetwater County, WY.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) There is no overhead traffic on the line; (3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on September 21, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal

<sup>1</sup> A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.



expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by August 31, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 10, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Jeanna L. Regier, Registered ICC Practitioner, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by August 26, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 92-20044 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Pursuant to the National Cooperative Research Act of 1984— Microelectronics & Computer Technology Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on June 25, 1992 filed a written notification simultaneously with the Attorney

General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 30, 1991, November 12, 1991, February 11, 1992, March 13, 1992, May 21, 1992, and June 2, 1992.

The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), August 29, 1991 (56 FR 42757), January 15, 1992 (57 FR 1760), March 24, 1992 (57 FR 10190), June 30, 1992 (57 FR 29100), and July 9, 1992 (57 FR 30510), respectively. A **Federal Register** notice has not yet been published for the MCC notification filed on May 21, 1992. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

The purpose of this notification is to disclose that National Starch and Chemical Company, Abelstik Laboratories, located in Rancho Dominguez, California, has become an Associate Member of MCC and a participant of the RwoH Project within MCC's Packaging/Interconnect Technology Program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.  
[FR Doc. 92-19953 Filed 8-20-92; 8:45 am]

BILLING CODE 4410-01-M

#### Notice Pursuant to the National Cooperative Research Act of 1984— Petroleum Environmental Research Forum

Notice is hereby given that, on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 91-05, titled "Basic Principles and Control of Refinery Emulsion Formation—Part 2", have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing changes in the parties participating in PERF Project No. 91-05. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become Participants in PERF Project No. 91-05: Phillips Petroleum Company Bartlesville, Oklahoma; and Shell Development Company Houston, Texas.

No other changes have been made in either membership or the planned activities of the group research project.

On March 16, 1992, the Participants in Project No. 91-05 filed the original notification pursuant to section 6(a) of the Act. The Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on April 30, 1992 (57 FR 18528).

Information regarding participation in this Project may be obtained from Dr. Kenneth R. Graziani, Mobil Research and Development Corporation, P.O. Box 480, 600 Billingsport Road, Paulsboro, NJ 08066-0480.

Joseph H. Widmar,

Director of Operations Antitrust Division.  
[FR Doc. 92-19954 Filed 8-20-92; 8:45 am]

BILLING CODE 4410-01-M

#### Notice Pursuant to the National Cooperative Research Act of 1984— Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 3201 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on July 6, 1992, disclosing that there have been changes in the membership of PCA. The notification

<sup>2</sup> See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.



was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Cadence Chemical Resources, Inc., Michigan City, IN, has become a Participating Associate, and Baker-Dolomite, York, PA, is now known as Dolomite Brick Corporation.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the *Federal Register* pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, December 14, 1989, January 31, 1990, May 29, 1990, July 15, 1990, December 18, 1990, January 31, 1991, May 28, 1991, October 15, 1991, and January 31, 1992, PCA filed additional written notifications. The Department published notices in the *Federal Register* in response to these additional notifications on April 10, 1985 (50 FR 14175), September 18, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43146), February 1, 1990 (55 FR 3497), March 7, 1990 (55 FR 8204), July 3, 1990 (55 FR 27518), July 19, 1990 (55 FR 29432), January 25, 1991 (56 FR 2950), March 15, 1991 (56 FR 11274), July 1, 1991 (56 FR 29977).

November 14, 1991 (56 FR 57903), and April 2, 1992 (57 FR 11338), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19955 Filed 8-20-92; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

### New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

#### Volume I

##### South Carolina:

SC91-24 (Aug. 21, 1992)..... p. All.

SC91-25 (Aug. 21, 1992)..... p. All.

SC91-26 (Aug. 21, 1992)..... p. All.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the



Federal Register are in parentheses following the decisions being modified.

### Volume I

#### New York:

- NY91-18 (Feb. 22, 1991) ..... p. 931, pp. 934-935.  
 NY91-22 (Feb. 22, 1991) ..... p. 952i, pp. 952j, 952l.

#### South Carolina:

- SC91-10 (Feb. 22, 1991) ..... p. All.

### Volume II

#### Illinois:

- IL91-1 (Feb. 22, 1991) ..... p. 69, pp. 71, 79-80.  
 IL91-3 (Feb. 22, 1991) ..... p. 115, p. 117.  
 IL91-4 (Feb. 22, 1991) ..... p. 121, pp. 123-124.  
 IL91-5 (Feb. 22, 1991) ..... p. 127, pp. 128-129.  
 IL91-7 (Feb. 22, 1991) ..... p. 137, pp. 138, 140, 142.  
 IL91-8 (Feb. 22, 1991) ..... p. 145, pp. 146-147.  
 IL91-9 (Feb. 22, 1991) ..... p. 153, p. 154.  
 IL91-11 (Feb. 22, 1991) ..... p. 163, pp. 168-170.  
 IL91-12 (Feb. 22, 1991) ..... p. 171, p. 173.  
 IL91-13 (Feb. 22, 1991) ..... p. 183, pp. 184, 186.  
 IL91-16 (Feb. 22, 1991) ..... p. 215, p. 216.

#### Indiana:

- IN91-2 (Feb. 22, 1991) ..... p. 259, pp. 262, 264.  
 IN91-4 (Feb. 22, 1991) ..... p. 292i, pp. 292-304.

#### Michigan:

- MI91-1 (Feb. 22, 1991) ..... p. 441, pp. 447, 456.  
 MI91-3 (Feb. 22, 1991) ..... p. 477, p. 481.  
 MI91-5 (Feb. 22, 1991) ..... p. 499, p. 502.

#### New Mexico:

- NM91-1 (Feb. 91-1 (Feb. 22, 1991). ..... p. 779, pp. 787, 794a, 794d.

#### Texas:

- TX91-69 (Feb. 22, 1991) ..... p. All.

#### Wisconsin:

- WI91-1 (Feb. 22, 1991) ..... p. All.  
 WI91-19 (Feb. 22, 1991) ..... p. 1285, pp. 1290-1293, p. 1300.

### Volume III

#### California:

- CA91-1 (Feb. 22, 1991) ..... p. All.  
 CA91-2 (Feb. 22, 1991) ..... p. All.  
 CA91-4 (Feb. 22, 1991) ..... p. All.

#### Utah:

- UT91-1 (Feb. 22, 1991) ..... p. All.  
 UT91-3 (Feb. 22, 1991) ..... p. 409, p. 410.  
 UT91-4 (Feb. 22, 1991) ..... p. 419, p. 420.  
 UT91-5 (Feb. 22, 1991) ..... p. 421, p. 422.  
 UT91-6 (Feb. 22, 1991) ..... p. 423, p. 424.

- UT91-7 (Feb. 22, 1991) ..... p. 425, p. 426.

- UT91-8 (Feb. 22, 1991) ..... p. All.

- UT91-11 (Feb. 22, 1991) ..... p. 437, p. 438.

- UT91-12 (Feb. 22, 1991) ..... p. 439, p. 440.

- UT91-13 (Feb. 22, 1991) ..... p. All.

- UT91-15 (Feb. 22, 1991) ..... p. All.

#### Wyoming:

- WY91-8 (Feb. 22, 1991) ..... p. All.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of August 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-19755 Filed 8-20-92; 8:45 am]

BILLING CODE 4510-27-M

### LIBRARY OF CONGRESS

#### Copyright Office

[Docket No. RM 87-7E]

#### Cable Compulsory License; Specialty Station Determination

AGENCY: Copyright Office, Library of Congress.

ACTION: Withdrawal of broadcast stations from 1991 Finals specialty station list.

SUMMARY: The Copyright Office of the Library of Congress issues this notice regarding certain broadcast stations published as specialty stations on the

revised list (55 FR 40,021, October 1, 1990) that have requested removal from the list. Three stations are removed from the list, which is hereby revised.

EFFECTIVE DATE: AUGUST 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707-8380.

### SUPPLEMENTARY INFORMATION:

#### Background

In response to petitions to make certain determinations concerning administration of the cable compulsory license of the 1976 Copyright Act, 17 U.S.C. 111, the Copyright Office initiated proceedings to update the list of specialty broadcast stations originally developed by the Federal Communications Commission (FCC). (53 FR 5,592, Feb. 25, 1988). In order to be considered a specialty station, a station must meet the terms of former Federal Communications Commission rules at 47 CFR 76.5(kk), in effect on June 24, 1981.

Affidavits were submitted by stations claiming specialty station status. A revised list was compiled, made available for public comment, and then published October 1, 1990. Due to procedural concerns, an addition to that list was published June 6, 1991.

Three stations that originally requested specialty station status, and were made part of the October 1, 1990 revised list, have requested removal from the list. The stations in question are noncommercial broadcast stations and the FCC's former specialty station regulation applied to commercial broadcast stations. The Copyright Office hereby notifies the public that the following stations will not be considered specialty stations for the purposes of calculating royalties under 17 U.S.C. 111.

KETH, Houston, TX  
 KITU, Beaumont, TX  
 KLUJ, Harlingen, TX

For noncommercial stations, the base rate applies in any event to their carriage by cable systems, but the distant signal equivalent value is one-quarter rather than one.

Dated: August 12, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-19966 Filed 8-20-92; 8:45 am]

BILLING CODE: 1410-08-F



**NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE****Meeting**

**AGENCY:** National Advisory Council on the Public Service (NACPS).

**ACTION:** Notice of meeting.

**DATE AND TIME:** September 10, 1992, 8:45 a.m. to 1 p.m.

**PLACE:** Riggs National Bank, 3d Floor, 1503 Pennsylvania Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:**

Chairman Raymond Shafer's welcome and remarks,  
NAPA Study on Succession Planning  
Senior Executive Association  
Perspective  
Public Service Priority Issues  
Executive Director's Report  
NACPS Work Plan Proposal  
Public Comment

**FOR FURTHER INFORMATION CONTACT:**

Jane Riddleberger, NACPS, suite 420, National Press Building, 529 14th Street, NW., Washington, DC 20045 (202-724-0796).

Dated: August 18, 1992.

Jean M. Curtis,

*Executive Director.*

[FR Doc. 92-20026 Filed 8-20-92; 8:45 am]

BILLING CODE 7525-01-M

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****Records Schedules; Availability and Request for Comments**

**AGENCY:** Office of Records Administration, NARA.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Request for copies must be received in writing on or before October 5, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending**

1. Department of Commerce, International Trade Administration (N1-151-92-4). Records of the Office of Canada.

2. Department of Commerce, National Oceanic and Atmospheric

Administration (N1-370-90-3). Comprehensive records schedule for the National Marine Fisheries Service.

3. Department of Defense, Office of the Secretary (N1-330-92-5). Recoupment Records of the Office of the Civilian Health and Medical Program for the Uniformed Services.

4. Department of the Navy, Naval Facilities Engineering Command (N1-385-92-1). Routine administrative records relating to real estate, legal matters, and weight handling equipment.

5. Department of the Navy, Bureau of Naval Personnel (N1-NU-92-12). Individual case files for treatment of alcoholism, drug dependency, and obesity.

6. Department of State (N1-59-92-20). Duplicative records accumulated by Graham Martin as Special Assistant to the Secretary of State, 1975-77.

7. Department of Transportation, Federal Highway Administration (N1-406-90-2). Federal-Aid Project supporting documentation.

8. Consumer Product Safety Commission, Directorate for Compliance and Administrative Litigation (N1-424-92-1). Intermediate compliance reports and evaluations.

9. National Archives and Records Administration (N1-64-92-2). Procurement subject file relating to release of the decennial census.

10. National Archives and Records Administration (N1-64-92-4). Facilitative records of the National Archives Federal Women's Program Committee.

Dated: August 13, 1992.

Claudine J. Weiher,

*Acting Archivist of the United States.*

[FR Doc. 92-19982 Filed 8-20-92; 8:45 am]

BILLING CODE 7515-01-M

**NATIONAL SCIENCE FOUNDATION****Notice of Establishment; Mathematical and Physical Sciences Advisory Committee**

The Assistant Director for Mathematical and Physical Sciences has determined that the establishment of the Advisory Committee for Mathematical and Physical Sciences is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.



*Name of Committee:* Advisory Committee for Mathematical and Physical Sciences.

*Purpose:* To provide advice, recommendation, and oversight concerning NSF's Mathematical, Physics, Astronomy, Materials and Chemistry programs; advice on policies and directions MPS programs in science and education should follow; provide advice on effective and efficient strategies for achieving overall program excellence, the appropriateness of current disciplinary boundaries; help to define the most effective investment strategies; judge the success of the programs, and other appropriate aspects of program performance.

*Balanced Membership Plans.* The Advisory Committee for Mathematical and Physical Sciences will be composed of up to 12 individuals with national stature in science, technology and education. Attention will be given to geographical distribution and the participation of individuals from underrepresented groups. Representatives of the Divisional Advisory Committees will serve as ex officio members.

*Responsible NSF Officials:* Dr. William C. Harris or Dr. Judith Sunley, 202/357-9742.

Dated: August 18, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19983 Filed 8-20-92; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-371]

### Finding of No Significant Impact Consideration of Amendment to UNC, Inc.; License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering an amendment of Special Nuclear Material License No. SNM-368 to permit UNC, Inc. (UNC) to leave low-levels of residual high-enriched uranium contamination onsite in their septic leach fields after decommissioning.

The Commission's Division of Low-Level Waste Management and Decommissioning has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-368. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the

preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 504-2565 or by writing to the Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interests may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

(1) The interest of the requestor in the proceedings;

(2) How that interest may be affected by the results of the proceeding including the reasons why the requestor should submit a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, UNC, Inc. to the attention of Mr. George H. Waugh, General Manager, UNC Naval Products, 67 Sandy Desert Road, P.O. Box 981, Uncasville, Connecticut 06382-0022; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Material Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated May 22, 1992, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 14th day of August, 1992.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 92-20018 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Revised Notice of Meeting

A portion of the ACRS Subcommittee meeting on Advanced Boiling Water Reactors scheduled for August 19, 1992 will be closed as necessary to discuss Proprietary Information (5 U.S.C. 552.b(3)(4)). All other items pertaining to this meeting remain the same as published previously in the **Federal Register** on Tuesday, August 4, 1992 (57 FR 34321).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. (E.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any



changes in schedule, etc., that may have occurred.

Dated: August 17, 1992.

M. Dean Houston, Acting Chief,  
Nuclear Reactors Branch.

[FR Doc. 92-20019 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

## UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

[Docket No. 50-344]

### Portland General Electric Co., et al., (Trojan Nuclear Plant); Exemption

#### I.

Portland General Electric Company, et al. (PGE or the licensee) is the holder of Facility Operating License No. NPF-1, which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that the licensee is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Columbia County, Oregon, on the Columbia River.

#### II.

Title 10, Code of Federal Regulations, part 50 (10 CFR part 50), "Domestic Licensing of Production and Utilization Facilities," provides appendix E, "Emergency Planning and Preparedness for Production and Utilization facilities." Specifically, 10 CFR part 50, appendix E, paragraph VI.4.d states in part, "Each licensee shall complete implementation of the ERDS (Emergency Response Data System) by February 13, 1993, or before initial escalation to full power, whichever comes later."

#### III.

By letter dated June 24, 1992, Portland General Electric Company, et al., requested a scheduler exemption from title 10, Code of Federal Regulations, part 50, appendix E, paragraph VI.4.d concerning implementation of the Emergency Response Data System (ERDS).

ERDS is a direct near real-time electronic data link between the licensee's onsite computer system and the NRC Operations Center that provides transmission of a limited data set of selected parameters related to plant conditions (e.g. reactor core and coolant system parameters, steam generator level and pressure, safety injection flows, etc.). The ERDS supplements the existing voice transmission over the Emergency

Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. Onsite hardware would be provided at the site by the licensee to interface with the NRC receiving system, the software for which will be provided by the NRC.

By letter dated October 24, 1991, PGE provided an acceptable ERDS implementation plan. The licensee had planned to implement ERDS during the 1992 refueling outage. ERDS implementation would be in conjunction with a new process computer that would be installed simultaneously and is necessary for ERDS, increasing the efficacy of the plant computer system and ERDS implementation. However, due to the extensive refueling outage in 1991, lasting approximately one year, the licensee decided not to have 1992 refueling outage, but instead opted for a short economy outage in Spring 1992 due to the abundance of hydro-electric power. The 1992 economy outage was not of sufficient duration to implement ERDS. The licensee has chosen to implement ERDS during the 1993 refueling outage, which is currently scheduled to begin on March 3, 1993. The 1993 refueling outage is the only outage of sufficient duration to install, test, and implement ERDS.

In accordance with 10 CFR 50.12, the licensee requested a scheduler exemption to 10 CFR part 50, appendix E, paragraph VI.4.d to delay ERDS implementation from February 13, 1993, until June 4, 1993. The purpose of the exemption would be to permit the implementation of a cost-effective ERDS at Trojan on a schedule that is compatible with the schedule for installation of the new process computer system. The licensee states that special circumstances are present such that 10 CFR 50.12(a)(2)(iii) and 10 CFR 50.12(a)(2)(v) are met. The licensee states that compliance with the present schedule would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, meeting the special circumstance of 10 CFR 50.12(a)(2)(iii). It would be imprudent to force a premature shutdown of the facility to install the ERDS system to meet the February 13, 1993, deadline. Indeed, for those plants requiring additional hardware modifications such as Trojan, this was considered in the Statements of Consideration (50-SC-101, dated August 30, 1991, Comment 16), and it was noted that an extension to the due date may be warranted. Additionally, the licensee states that the

exemption would provide only temporary relief from the applicable regulation and that they have made good faith efforts to comply with the regulation, meeting the special circumstance of 10 CFR 50.12(a)(2)(v). The exemption would last less than four (4) months and many of the preliminary steps have been completed, with the licensee investing significant resources to this effort. The staff agrees with the licensee that special circumstances are present in regard to the requested exemption.

#### IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a)(1), that an exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has determined, pursuant to 10 CFR 50.12(a)(2) that special circumstances exist, as noted in section III above. Therefore, the Commission hereby grants Portland General Electric Company, et al., a scheduler exemption from the requirements of 10 CFR part 50, appendix E, paragraph VI.4.d.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (57 FR 35606).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 14th day of August 1992.

For The Nuclear Regulatory Commission.  
John A. Zwolinski,

Acting Director, Division of Reactor Projects  
III/IV/V, Office of Nuclear Reactor  
Regulation.

[FR Doc. 92-20017 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8027]; [License No. SUB-1010]

### Sequoyah Fuels Corp., Gore, Oklahoma; Amendment Receipt and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering the amendment of Materials License No. SUB-1010 to revise the organization and grant an exemption from the experience requirements for the position of Vice President, Regulatory Affairs, for



Sequoyah Fuels Corporation (SFC) located in Gore, Oklahoma.

#### Proposed Action

By amendment request dated June 19, 1992 (earlier requests are superseded), SFC requested a license amendment to make organizational changes. SFC has added new positions of Manager, Waste Management, and Manager, Human Resources, combined the position of Maintenance and Engineering, and made other minor organizational changes. By amendment request dated June 3, 1992, SFC requested an exemption to the experience requirements for the position of Vice President, Regulatory Affairs. Current requirements include 5 years experience in a chemical or nuclear process plant. The documents related to these proposed actions are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC, and the Local Public Document Room at the Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

#### Opportunity for a Hearing

Any person whose interest may be affected by the issuance of these amendments may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe

the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 10th day of August 1992.

For the Nuclear Regulatory Commission.

**Michael Tokar,**

*Acting Chief, Fuel Cycle Safety Branch,  
Division of Industrial and Medical Nuclear  
Safety, NMSS.*

[FR Doc. 92-20016 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Sequestration Update Report

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of Transmittal of Sequestration Update Report to the President and Congress.

**SUMMARY:** Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

#### FOR FURTHER INFORMATION CONTACT:

Arthur W. Stigile, Budget Analysis Branch—202/395-3945.

Dated: August 14, 1992.

**James C. Murr,**

*Associate Director for Legislative Reference and Administration.*

[FR Doc. 92-19842 Filed 8-20-92; 8:45 am]

BILLING CODE 3110-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2141

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 5th Street, NW., Washington, DC 20549.

Approval: File Nos. 270-372, 270-373, Proposed Rules 22e-3 and 23c-3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities

and Exchange Commission has submitted for OMB approval proposed rules 22e-3 and 23c-3 under the Investment Company Act of 1940.

Proposed rule 22d-3 would permit certain registered open-end investment companies (other than money market funds) or registered separate accounts to redeem shares following deadlines at periodic intervals, or on a rolling basis while taking longer than seven days to pay. The rule would require the boards of directors of limited redemption funds to adopt written procedures designed to ensure that the company's portfolio assets are sufficiently liquid; directors would be required to review those procedures annually, or on other occasions when necessary as a result of market developments. It is estimated that each of 10 respondents would incur an annual estimated 28 burden hours initially to establish a liquidity policy and 8 burden hours subsequently for the annual review of liquidity policies.

Rule 23c-3 would permit closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. These repurchases would exempt from disclosure and filing requirements of the tender offers rules under the Securities Exchange Act of 1934. Rule 23c-3 would require closed-end funds making repurchase offers under the rule to provide a notification to shareholders containing certain specified information, and to file three copies of the notification with the Commission. We estimate that 10 respondents together would incur an annual estimated 80 burden hours to comply with this requirement. Rule 23c-3 also would require closed-end funds relying on the rule to file copies of advertisements and other sales literature with the Commission unless already filed with the National Association of Securities Dealers (NASD). Respondents should not incur any additional burden hours to comply with this requirement to the extent that their principal underwriter already is required to, and does, file such materials with the NASD.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549, and Gary



Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 6, 1992.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 92-20034 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

## Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash  
(202) 272-2142.

Upon written request copy available from:  
Securities and Exchange Commission,  
Office of Filings, Information and  
Consumer Services, Washington, DC 20549.  
Extension: Rule 17a-5(c), File No. 270-199,  
Rule 17f-1(g), File No. 270-30.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

Rule 17A-5(c) (17 CFR 240.17a-5(c)), requires broker-dealers to provide statements of financial condition to their customers. It is estimated that approximately 1500 broker-dealer respondents incur an average burden of 33.33 hours per year to comply with this rule.

Rule 17f-1(g) (17 CFR 240.17f-1(g)), sets out recordkeeping requirement for participants in the Lost and Stolen Securities Program. It is estimated that 23,403 incur an average burden of 33 minutes per year to comply with this rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 12, 1992.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 92-20035 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31044; File No. SR-AMEX-92-22]

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives ("BOUNDS")

August 14, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1992, the American Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b-4 under the Act, proposes to add new Exchange Rules 900G-907G to permit trading in "BOUNDS" ("Buy-Write Options Unitary Derivatives"). As described in more detail below, BOUNDS are long term options with a duration of up to 60 months which have the same economic characteristics as covered calls.<sup>1</sup> BOUND holders will be able to participate in a stock's price appreciation up to but not exceeding a specified strike price while receiving payments equivalent to any cash dividends declared on the underlying stock. The Exchange also proposes to amend Commentary .03 to AMEX Rule 903 to permit the listing of long term equity options ("LEAPs") with a duration of up to 60 months.

The text of the proposed rule change is attached as Exhibit A.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### (1) Purpose

**Background.** In 1986, the Exchange began listing 26 unit investment trusts ("UITs"), each of which held shares of a single "blue-chip" equity security. Investors were offered an opportunity to separate their ownership interests in these UITs into two distinct trading components representing different economic characteristics of the individual stocks held in the UITs. These separate trading components are known as PRIMES and SCOREs.

PRIMES are the enhanced income/limited capital gain component. The holder of a PRIME retains the dividends on the stock held by the trust and participates in the underlying stock's appreciation up to a fixed dollar amount. SCOREs are the capital appreciation component. The holder of a SCORE has the right to all capital appreciation above a fixed dollar amount, but does not receive the dividends on the underlying stock.

PRIMES and SCOREs have been extremely popular with investors, but the UITs from which they are derived are now reaching their five-year termination dates. Certain Internal Revenue Service regulations, moreover, effectively preclude the creation of new PRIMES and SCOREs through the original trust mechanism.

**Discussion.** The Exchange, for some time, has sought a replacement for the expiring PRIMES and SCOREs. During this process, the Exchange and other options exchanges began to list and trade LEAPs. Like SCOREs, LEAPs enable investors to receive the benefits of a stock's price appreciation above a fixed dollar amount over a long period of time. Currently, however, there is no generally available replacement for PRIMES.

The Exchange, accordingly, proposes to list BOUNDS as a replacement for PRIMES. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDS traded on the Exchange.

<sup>1</sup> Covered call writing is a strategy by which an investor sells a call option while simultaneously owning the number of shares of the stock underlying the call.



As with all OCC issued options, BOUNDS will be created when an opening buy and an opening sell order are executed.<sup>2</sup> The execution of such orders will increase the open interest in BOUNDS. Except as described herein, BOUNDS will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDS with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDS will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, will tend to bring the price relationships back into line.

BOUNDS will have the same strike prices and expiration dates as their respective LEAPs. The Exchange anticipates that it will list new complementary LEAPs and BOUNDS on the same underlying securities annually, or at more frequent intervals, depending on market demand. While it has the current authority to list LEAPs with up to 39 months until expiration, the Exchange is proposing: (i) to amend Commentary .03 to Exchange Rule 903 to permit the listing of LEAPs with up to 60 months (five years) until expiration, and (ii) to introduce BOUNDS with up to the same five year duration.

Like PRIMEs, BOUNDS will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDS can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDS and credit all accounts with long positions in BOUNDS with an amount equal to the cash dividend on the underlying stock.

At expiration, BOUND holders will receive 100 shares of the underlying

stock for each BOUND held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND held. BOUND writers will be required to deliver either 100 shares of the underlying stock or the strike price multiplied by 100 at expiration. This settlement design is similar to the economic result that accrues to an investor who has sold a covered call and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of \$50 and XYZ stock closes at \$50 or less at expiration, the holder of the XYZ BOUND will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above \$50 per share, then the holder of an XYZ BOUND will receive \$5,000 in cash (100 times the \$50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, i.e., the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price because the stock would be delivered to satisfy the settlement obligations created upon the exercise of the call option.

The settlement mechanism for the BOUND's will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND will receive 100 shares of stock from the short BOUND. If, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the \$50 strike price at expiration, would be entitled to receive \$5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay \$5,000 to receive 100 shares of XYZ stock.

An investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which

amount will then be delivered to the long BOUND. A covered writer's position, therefore, effectively is closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAP's are "American" style options whereas BOUND's are "European" style. The Exchange believes that a European style B will have greater acceptance among investors than an American style product since a European style BOUND will permit purchasers to receive for a definite period of time the dividend yield provided by the BOUND.

**Sales practices.** BOUND's will be subject to the Exchange's sales practice and suitability rules applicable to standardized options.

**Adjustments.** The terms of a BOUND will not be adjusted because of cash distributions to the shareholders of the underlying security. As noted above, OCC will debit all accounts with short BOUND positions and credit all accounts with long BOUND positions on the underlying stock's ex-dividend date with an amount equal to any cash dividend declared with respect to the underlying stock. Any cash distributions payable with respect to an underlying security by virtue of a regular, special, liquidating or any other dividend or distribution will be debited to the accounts of persons that have sold BOUND's and credited to the accounts of persons that have bought BOUND's.

If the issuer of an underlying security has a stock split, stock dividend or otherwise makes a non-cash distribution to its shareholders, the terms of the outstanding BOUND's with respect that issuer will be adjusted as of the ex-date for the distribution so that the sellers of such BOUND's will be obligated to deliver the additional securities to the BOUND purchasers at the expiration of the then outstanding BOUND's. It is the intention of the Exchange to list new series of complementary BOUND's and LEAP's with respect to any underlying security making a non-cash distribution, provided the underlying security meets the established criteria required for listing LEAP's and BOUND's. In addition, should an underlying security terminate prior to the expiration date due to some extraordinary event, e.g., a

<sup>2</sup> This is not to say, however, that an opening BOUND order cannot be executed against a closing BOUND order. Although a BOUNDS position may be established by executing an opening BOUND order against a closing BOUND order, this transaction would not increase the net open interest in the particular BOUND series so long as the opening and closing orders covered the same number of BOUND contracts.



takeover of the issuer, the BOUNDS will terminate prior to their expiration date, and holders will receive either the stock (and possibly other securities) or the stated strike price from sellers according to the settlement protocol described above.

**Position limits.** BOUND's will be subject to the position limits for equity options set forth in Exchange Rule 904. In addition, BOUND's will be aggregated with other equity options on the same strike price for purposes of calculating position limits. However, since a BOUND, from the perspective of the holder, is the equivalent of a long stock/short call position, long BOUND's will be aggregated with short call and long put positions. Similarly, since the BOUND, from the perspective of the seller, is the equivalent of a long call/short stock position, short BOUND's will be aggregated with long call and short put positions. In addition, since BOUND's are the equivalent to either a long stock/short call or a short stock/long call position, investors in BOUND's may be eligible for larger positions pursuant to the Exchange's hedged position limit pilot program. Thus, the largest BOUND position that any one person, or group of persons acting in concert, may establish would be 16,000 BOUND's, i.e. two times the maximum regular position limit of 8,000 option contracts.

#### (2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex believes that the proposed rule change will impose no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies to the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

#### Exhibit A

American Stock Exchange, Inc.  
Proposed Rule Changes

Italicizing indicates material proposed to be added. [Brackets] indicate material proposed to be deleted. Proposed Section 15 to the Exchange's "Rules Exchange's "Rules Principality Applicable to Trading of Option Contracts" (Rules 900G through 907G) regarding Buy-Write Option Unitary Derivatives ("BOUNDS<sup>SM</sup>") is entirely new.

### Rule 903. Series of Options Open for Trading

(a) Through (d) No change. Commentaries .01 and .02 No change.

**Commentary .03** The Exchange may list, with respect to any class of stock options, series of options having up to [thirty-nine] sixty months from the time they are listed until expiration. There may be up to [six] ten additional expiration months. Strike price interval, bid/ask differential shall continuity rules shall not apply to such options until the time to expiration is less than nine months. Further, such option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations need to be posted for such options series until they are opened for trading.

### Section 15. Buy-Write Option Unitary Derivatives ("BOUNDS<sup>SM</sup>") Applicability; Definitions

**Rule 900G. (a) Applicability.** The Rules in this Section are applicable only to Buy-Write Option Unitary Derivatives ("BOUNDS"). Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading of BOUNDS on the Exchange. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), 909, 915, 916, 918, 920, 921, 922, 923, 924, 925, 926, 927, 928, 930, 932, 950 (except that 950(e)(ii) and 950(e)(iii) shall not apply), 951(a), 951(b), 951(c), 952(a), 953, 954, 955, 956, 957, 958, 958A, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, and 991. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, BOUNDS are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

Compliance with Rules 904, 905 and 906 shall be determined as set forth in Rules 904G, 905G and 906G.

**(b) Definitions.** The following terms as used in the Rules, shall unless the context otherwise indicates, have the meanings herein specified.

**(1) Buy-Write Option Unitary Derivative ("BOUND").**—The term "BOUND" means a derivative instrument issued, or subject to issuance, by the Options Clearing Corporation pursuant to the rules of the Options Clearing Corporation with a specific expiration date and strike price which: (1) pays holders an amount equal to the dividend or other cash distribution declared on the underlying security, and (2) pays holders an amount equal to the strike price if the closing price of the underlying security on the specified expiration date is higher than the strike price, or delivers to holders the underlying security without further payment other than processing fees if the closing price of the underlying security on the specified expiration date is equal to or lower than the strike price. The reference to "the closing price of the underlying security on the specified expiration date" means the last transaction effected in the primary market for



such underlying security during regular trading session and reported by such market in accordance with the provisions of SEC Rule 11Aa3-1.

(2) **Underlying Security**—The term "underlying security" in respect of a BOUND contract means the security or securities which the Options Clearing Corporation shall be obligated to deliver to the holder if the closing price of the security on the specified expiration date is less than, or equal to, the strike price and whose dividends or other cash distributions shall be used to determine the amount and timing of the payments which the Options Clearing Corporation shall be obligated to pay BOUND holders during the life of the contract.

(3) **Strike Price**—The term "strike price" in respect of a BOUND contract means a stated price per share for the underlying security which price shall be the basis for determining the manner of settlement for each BOUND contract at the specified expiration date. Any reference to the term "exercise price" in the Exchange's Rules Principally Applicable to the Trading of Options Contracts shall, when applied to BOUNDS, refer to the strike price of a BOUND.

(4) **LEAP**—The term "LEAP" shall mean a long term option listed on the Exchange pursuant to Rule 903, Commentary .03.

#### **BOUND Contracts to be Traded**

**Rule 901G.** The Exchange may from time to time approve for listing and trading on the Exchange BOUND contracts in respect of underlying securities which have been selected in accordance with Rule 915. Only BOUND contracts approved by the Exchange and currently open for trading on the Exchange may be purchased or sold on the Exchange. All such BOUND contracts shall be designated as to expiration month, expiration year, strike price and underlying stock.

#### **Rights and Obligations of Holders and Sellers**

**Rule 902G.** Subject to the provisions of Rules 905 and 909, the rights and obligations of holders and sellers of BOUNDS dealt in on the Exchange shall be as set forth in the rules of the Options Clearing Corporation.

#### **BOUND Expiration Schedule, Series of BOUNDS Open for Trading, Strike Prices**

**Rule 903G.** (a) After the Exchange has approved for listing and trading BOUND contracts relating to a specific underlying security, the Exchange shall from time to time open for trading additional BOUND contracts in respect of such underlying securities. Prior to opening of trading in such BOUNDS, the Exchange shall fix the expiration month, expiration year, and strike price of such BOUND contracts. The Exchange may list BOUND contracts having up to 60 months from the time they are listed until expiration. There may be up to ten additional expiration months.

(b) Strike price interval, bid/ask differential and continuity rules applicable to transactions in put and call options shall not apply to transactions in BOUNDS until the time to expiration is less than nine months. Further, BOUNDS will open for trading either when there is buying or selling interest, or 40

minutes prior to the close, whichever occurs first. No quotations need to be posted for such BOUNDS until they are opened for trading.

(c) The unit of trading and strike price initially established for BOUND contracts of a particular series are subject to adjustment in accordance with the rules of the Options Clearing Corporation. When such adjustment or adjustments have been determined, announcement thereof shall be made by the Exchange and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted strike price shall be applicable with respect to all subsequent transactions in such BOUNDS.

(d) BOUND contracts are subject to adjustments in accordance with the rules of the Options Clearing Corporation.

#### **Position Limits**

**904G.** Position limits relating to BOUNDS shall be governed by the provisions of Rule 904 except that, for purposes of determining BOUND position limits, the holder of a long BOUND shall be considered to be long the underlying security and short and call of the underlying security; the seller of a BOUND that is not covered with the underlying security shall be considered to be short the underlying security and long a call on the underlying security; and a seller of a BOUND that is covered with the underlying security shall be considered to be long a call on the underlying security. In determining compliance with position limits, positions in BOUNDS and put and call options shall be aggregated.

#### **Exercise of BOUND Contracts**

**Rule 905G.** BOUND contracts may not be exercised prior to the specified expiration date of the contract.

#### **Reporting of BOUNDS Positions**

**Rule 906G.** Positions in BOUNDS shall be reported pursuant to Rule 906 with the minimum position in an account to be reported being 200 BOUNDS. In computing and reporting reportable positions under Rule 906 and this Rule, positions in BOUNDS and put and call options on the same underlying security shall be aggregated on the basis of one BOUND equaling one call option.

#### **Delivery and Payment**

**Rule 907G.** (a) Delivery of the strike price or shares of the underlying stock upon the expiration of a BOUND contract shall be affected in accordance with the rules of the Options Clearing Corporation. If the closing price of the underlying security on the specified expiration date is at or below the strike price for the contract, the member organization shall require the customer to deposit as promptly as possible after the expiration of the contract the underlying security if it is not already carried in the customer's account. If the closing price of the underlying security on the specified expiration date is above the strike price, the member organization shall require the customer to make full cash payment of the aggregate strike price as promptly as possible after expiration of the contract.

(b) Delivery of the payments equal to the dividend or other cash distribution declared

on the underlying security shall be affected in accordance with the rules of the Options Clearing Corporation.

[FR Doc. 92-20042 Filed 9-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31045; File No. SR-CSE-92-06]

### **Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc., Amending its By-Laws to Permit Simultaneous Service as Chairman and President**

August 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CSE proposes to amend its Code of Regulations ("By-Laws") to permit the same individual to serve simultaneously as Exchange President and Chairman of the Board of Trustees ("Board").

The following is the text of the proposed change to Article VII of the Exchange By-Laws (deletions are bracketed):

#### **Article VII Officers and Employees**

##### **Section 1. Composition of Officers**

The officers of the Exchange shall be a Chairman of the Board of Trustees, President, Secretary, Treasurer and such other officers as may be appointed by the Board of Trustees. Any person may hold more than one office, except that [the same person may not hold the office of both President and Chairman of the Board and] the Secretary may not hold either the office of President or Chairman of the Board.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change



and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, as set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to permit the same individual to serve as Exchange Chairman and President. Article VII, section 1 of the CSE's By-Laws currently prohibits this, but it does not appear that the resulting burden on Exchange administration is justified by any advantage to Exchange governance.<sup>1</sup> Apart from customary distinctions, the principal distinction between the powers of the President and the Chairman specified in the Exchange By-Laws is that only the Chairman is given authority to appoint committee members (with Board of Trustees approval), fill committee vacancies and remove committee members.<sup>2</sup> The CSE sees little potential problem in conferring these committee-related powers to the individual serving as President, because even under the proposed amendment no individual could fill both posts without the consent of the Board of Trustees.<sup>3</sup>

The proposed changes are consistent with section 6(b) of the Act, and in particular with section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed changes should have no adverse impact on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The proposed rule change was approved by membership vote on July 10, 1992.<sup>4</sup>

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

*IV. Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-92-06 and should be submitted by September 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 92-20043 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31043; File No. SR-PSE-92-12]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc.; Relating to the Listing and Trading of Index Options on the Wilshire Small Cap Index**

August 14, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 21, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PSE proposes to list and trade index options on the Wilshire Small Cap Index ("Wilshire Index" or "Index"), a broad-based, market-weighted index composed of 250 domestic stocks designed to reflect the characteristics and market performance of small stocks generally. In addition, the Exchange is proposing to amend PSE Rule 7.6, relating to position limits for index options to accommodate the trading of Wilshire Index Options. The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

<sup>1</sup> As a clarification, the CSE added that the actual burden to the Exchange of a particular, qualified individual not being able to hold both positions outweighs any potential advantages of separating the offices. Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992.

<sup>2</sup> See CSE By-Law Article VI, section 1.2.

<sup>3</sup> Pursuant to CSE By-Law Article VII, section 1, the Chairman and the President are both appointed by the Board of Trustees.

<sup>4</sup> The CSE adds that the proposed rule change was approved by the Exchange's Executive Committee on June 17, 1992 and ratified by the Board on July 22, 1992. Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992. This completes the required approval necessary for a CSE by-law change. See CSE By-Law Article IX, section 1.



sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Introduction

The Exchange is proposing to list and trade options on the Wilshire Index, which was developed by Wilshire Associates, Inc., a leading provider of analytical and consulting services to the investment management and retirement fund industries. This market-weighted index is designed to reflect the characteristics and market performance of small stocks generally. It is composed of 250 domestic stocks with a median market capitalization of \$404 million. Options on the Index will have European-style exercise and will be cash-settled.

The Index is derived from the Wilshire Next 1750 ("Next 1750"), which is widely viewed by institutional investors as the benchmark for the small capitalization universe. The Next 1750 is derived from the Wilshire Top 2500 ("Top 2500"), an Index comprised of the largest 2500 securities in the all-inclusive Wilshire 5000. (Nearly 98 percent of the Wilshire 5000's market value is included in the Top 2500). The Next 1750 consists of the bottom 1750 stocks of the Top 2500 and provides a substantially different performance profile than the large company portion of that universe (the Wilshire Top 750).

The Index is designed to capture the essential return profile and fundamental characteristics of the Wilshire Next 1750, but also to produce greater liquidity and a lower turnover rate in component stocks. The PSE believes that options on the Index could provide an effective means for hedging the risks of small capitalization stocks and a low-cost means of altering the composition of an equity portfolio.

(2) Index Composition

The Index is composed of 250 stocks selected by Wilshire based on a process using a stratified sampling of the small company universe. It is broad-based and is comprised of stocks in the following nine economic sectors: Capital Goods (6.9%), Consumer Durables (3.7%), Consumer Non-Durables (27%), Energy (4.9%), Financials (17.7%), Material & Services (20.2%), Technology (11.1%), Transportation (2.0%), and Utilities (6.4%). The Index has a high degree of correlation with well-known benchmarks of the small-cap sector, including the Wilshire Next 1750 Index

(99.7%) and the Russell 2000 Index (99.05%).

The 250 component stocks are listed for trading on the New York Stock Exchange (138 stocks), the American Stock Exchange (13 stocks) and National Association of Securities Dealers NASDAQ system (99 stocks). Currently, all of the NASDAQ issues included in the Index are National Market System ("NMS") securities. If an NMS issue becomes a non-NMS security, it will not be replaced. As of July 1, 1992, 115 securities, amounting to 52 percent of the market capitalization of the Index, meet the Exchange's initial options listing standards set forth in PSE Rule 3.6. The Exchange anticipates that no less than forty-five percent of the market capitalization of the Index will meet such listing standards at any given time as a result of any annual restructuring of the Index composition.

The 250 stocks comprising the Index have a total market value of \$104 billion. As of July 1, 1992, the capitalization of the component stocks ranged from \$81 million to \$726 million, with a median capitalization of \$404 million. The highest-capitalized stock, Universal Foods Corporation, accounts for .70 percent of the Index. In addition, the ten highest capitalized stocks account for 6.87 percent of the Index and the ten lowest capitalized stocks account for 1.05 percent of the Index.

The Exchange proposes to adopt the following minimum standards with respect to the Index composition. First, no more than seven percent of the total market capitalization of the Index may consist of stocks with an average trading volume of less than 10,000 shares per day. Second, no stock may be added to the Index if it has a six-month average daily trading volume of less than 5,000 shares. Third, no more than five percent of the total market capitalization of the Index may consist of stocks with a market capitalization of less than \$150 million. Fourth, no stock may be added to the Index if it has a stock price less than \$1 or a market capitalization less than \$80 million. Fifth, at no time will more than four percent of the Index consist of non-NMS securities.

Wilshire will update the Index annually at the end of June, when the Wilshire 5000, the Wilshire Top 2500, the Wilshire Next 1750 and the Wilshire Top 750 Indexes are updated. Changes made to the composition of the Wilshire Next 1750 during its annual recapitalization may result in corresponding changes to the Index. If a stock ceases to trade during the year as a result of a merger, acquisition or other event whereby the company ceases to exist as a going

concern, it will be removed from the Index and replaced in the subsequent annual recapitalization. No interim replacements will be made. Replacement stocks will be selected on the basis of a stratified sampling of the small company universe.

(3) Index Calculation

The Index is calculated using the last sale prices of the stocks comprising the Index. However, if a component stock is not open for trading, the most recently traded price will be used in the Index calculation. The Index will be calculated every 15 seconds throughout the trading day by Bridge Data Services and will be disseminated by the Options Price Reporting Authority to wire services, quote vendors and the financial media.

The Index value will be calculated by adding the market values of the component stocks, which are derived by multiplying the price of the stock by its shares outstanding, to arrive at total market capitalization changes. The Index multiplier will be \$100 times the Index value.

(4) Index Option Trading

The proposed Index options will be cash-settled and feature European-style exercise. Trading in the Index options will be governed by PSE Rule 7 (Index Options). The Index options will trade from 6:30 a.m. to 1:15 p.m. Pacific Time. The Exchange intends to list put and call options having up to four consecutive near-term expiration months plus five additional further-term expiration months in the March cycle, extending into successive years.

The Exchange intends to introduce Index option series with up to one year in duration at five-point strike price intervals and, for longer-term options, strike prices with as wide as twenty-five or fifty point intervals. Position limits for Index options will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month. In all other respects, Exchange policies and rules applicable to the Index options will be the same as current rules applicable to other index options that trade on the Exchange. For customer orders up to 100 contracts, the Exchange will use the Auto-Ex feature of POETS, the PSE's automated order routing and execution system, for certain near-term series in order to afford customers deep and liquid markets and prompt executions.



**(5) Settlement of Index Options**

The Index value for purposes of settling Index options ("Settlement Value") will be calculated on the basis of opening market prices on the business day prior to the expiration date of the options ("Settlement Day"). Settlement Day is normally the Friday preceding "Expiration Saturday." For exchange-listed stocks, their opening value will be based on the price of the stock on its primary market. For securities trading on NASDAQ, the opening value will be based on the first reported trade of the day. However, if a component security does not trade on Settlement Day, the closing price from the previous trading day will be used to calculate the Settlement Value. Thus, trading in expiring Index options will cease at the close of trading two business days before expiration Saturday (normally the Thursday preceding Expiration Saturday).

**(6) Basis**

The proposed rule change is consistent with section 6(b) of the Act in general, and section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade; to protect investors and the public interest; and to remove impediments to and perfect the mechanism of a free and open market.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 92-20041 Filed 8-20-92; 8:45 am]  
BILLING CODE 8010-01-M

**DEPARTMENT OF STATE**

[Public Notice 1675]

**Public Information Collection Requirement Submitted to OMB for Review**

**AGENCY:** Department of State.

**ACTION:** On July 27, 1992, the Department of State requested emergency approval from OMB for the following public information collection requirement, under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**SUMMARY:** On May 13, 1992, the Government of the United States of America and the Government of the Federal Republic of Germany signed an agreement concerning the settlement of certain property claims. The information collected will be used by the Departments of State and Treasury and the Foreign Claims Settlement Commission (FCSC) to determine whether eligible claimants elect to receive a portion of the settlement amount under the agreement signed May 13 or whether they instead elect to

pursue their property claims under German law and also to prevent dual recovery from the Federal Republic of Germany. The following summarizes the information collection proposals submitted to OMB:

Type of request—New.

Originating office—Department of State (L/CID) and the Department of Treasury.

Title of information collection—German Democratic Republic Claims Program Election Form.

Frequency—One time.

Respondents—Claimants with favorable awards issued by the Foreign Claims Settlement Commission in its German Democratic Republic Claims Program.

Estimated number of respondents—2,500.

Average hours per response—3 hours.

Total estimated burden hours—7,500. Section 3504(h) of Public Law 96-511 does not apply.

**DATES:** The Department requested OMB approval by July 29, 1992.

**ADDITIONAL INFORMATION OR**

**COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Mia Abeya (202) 874-8740 or Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: August 7, 1992.

Sheldon J. Kryss,

Assistant Secretary for Diplomatic Security.

[FR Doc. 92-19952 Filed 8-20-92; 8:45 am]

BILLING CODE 4710-43-M

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****FTA Sections 3 and 9 Grant Obligations**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, signed into law by President George Bush on October 28, 1991, contained a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the *Federal Register* every 30 days of grants obligated pursuant to Sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.



This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:**

Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366-2053.

**SUPPLEMENTARY INFORMATION:** The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible

funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

**SECTION 3 GRANTS**

Transit property	Grant number	Grant amount	Obligation date
Long Beach Public Transportation Company, Los Angeles, CA.....	CA-03-0368-00	\$13,875,000	07/06/92
Greater Hartford Transit District, Hartford-Middletown, CT.....	CT-03-0078-00	99,350	07/17/92
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC-MD-VA.....	DC-03-0023-00	4,900,000	07/20/92
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA.....	GA-03-0039-00	2,555,028	07/28/92
Suburban Bus Division—RTA, Chicago, IL—Northwestern IN.....	IL-03-0164-00	2,300,000	07/17/92
Ann Arbor Transportation Authority, Ann Arbor, MI.....	MI-03-0127-00	1,500,000	07/17/92
City of Charlotte, Charlotte, NC.....	NC-03-0027-00	125,000	07/17/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ.....	PA-03-0207-01	2,880,000	07/17/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ.....	PA-03-0220-00	10,125,000	07/17/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ.....	PA-03-0229-00	40,000,000	07/17/92
Berks Area Reading Transportation Authority, Reading, PA.....	PA-03-0231-00	2,500,000	07/27/92

**SECTION 9 GRANTS**

Transit property	Grant number	Grant amount	Obligation date
Regional Transportation District, Denver, CO.....	CO-90-X065-00	\$14,409,104	07/06/92
Northern Indiana Commuter Transportation District, Northwestern IN—Chicago, IL.....	IN-90-X168-00	2,545,206	07/07/92
City of Greensboro, NC Greensboro.....	NC-90-X140-00	1,218,331	07/06/92
City of Las Cruces, Las Cruces, NM.....	NM-90-X034-00	572,321	07/27/92
Oneida County, Utica-Rome, NY.....	NY-90-X232-00	235,948	07/15/92
Jackson Transit Authority, Jackson, TN.....	TN-90-X101-00	499,200	07/15/92
Fort Worth Transportation Authority, Dallas-Ft. Worth, TX.....	TX-90-X233-00	5,256,264	07/14/92
Chittenden County Transportation Authority, Burlington, VT.....	VT-90-X013-00	190,000	07/06/92
Spokane Transit Authority, Spokane, WA.....	WA-90-X133-00	3,632,392	07/15/92

Issued On: August 17, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-19967 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-57-M

**Research and Special Programs Administration**

[Docket No. PDA-6(R)]

**Nalco Chemical Co. Application for a Preemption Determination on California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Public notice and invitation to comment.

**SUMMARY:** Nalco Chemical Company (Nalco) of Naperville, Illinois, has applied for an administrative

determination whether California Vehicle Code, Division 14.7 (sections 34000-34102), and California Administrative Code, title 13, article 3 (sections 1160.1-1165) and article 6 (sections 1190-1197) (collectively "cargo tank requirements"), are preempted by the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations issued under the HMTA.

**DATES:** Comments received on or before October 5, 1992, and rebuttal comments received on or before November 19, 1992, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** This application, Nalco's prior application for an inconsistency ruling and comments thereon in Docket

No. IRA-53, and any comments submitted on the present application may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001 (Tel. No. 202-336-4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA-6(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (1) Lawrence W. Bierlein, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for Nalco Chemical Co., and (2) Mr. Paul Horgan, Engineer, Department of California Highway Patrol, Hazardous Materials Section, 2555 First Avenue, Sacramento, CA 95818. A certification that a copy has been sent to these persons must also be included



with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Bierlein and Horgan at the addresses specified in the Federal Register.")

#### FOR FURTHER INFORMATION CONTACT:

Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

#### I. Background and Preemption Under the HMTA

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 app. U.S.C. 1801. It replaced a patchwork of state and local laws.

"[U]niformity was the linchpin in the design of" the HMTA. *Colorado Pub. Util. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." HMTA, Public Law 93-633 section 112(a), 88 Stat. 2161 (1975) (amended 1990, see 49 app. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974), as quoted in IR-2 (State or Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

The HMTA also authorized the Secretary of Transportation to determine that a State or local requirement was not preempted by the HMTA and the HMR, upon finding "that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce." HMTA, Public Law 93-633 section 112(b), 88 Stat. 2161 (1975) (amended 1990, see 49 app. U.S.C. 1811(d)).

In 49 CFR part 107, subpart C, the Materials Transportation Board (RSPA's predecessor agency) "published procedures that implement the preemption language of the HMTA by

providing for the issuance of inconsistency rulings." IR-2, 44 FR at 75567. Such inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local relationships," and also a possible "basis for an application \* \* \* (for) a waiver of preemption pursuant to section 112(b) of the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State of local requirement was consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38167, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.) These "dual compliance" and "obstacle" criteria, respectively, are based on U.S. Supreme Court decisions on preemption *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In June 1990, in accordance with RSPA's procedural regulations then in effect, Nalco applied for an inconsistency ruling regarding California's cargo tank requirements. This application was assigned Docket No. IRA-53, and on September 6, 1990, RSPA published a Public Notice and Invitation to Comment, which (1) summarized Nalco's application, (2) advised that the application (including attachments) were available for review in RSPA's Docket Unit, and (3) invited interested parties to comment on the application. 55 FR 36732.

Comments in Docket No. IRA-53 were submitted by the California Highway Patrol (CHP), National Tank Truck Carriers, Inc., Hazardous Materials Advisory Council, Chemical Waste Transportation Institute, and Union Pacific Railroad Company. Rebuttal comments were submitted by California's Department of Health Services. Nalco deferred submitting rebuttal comments based on its understanding that the comment period would be reopened to consider the effect of the changes to the HMTA's preemption provisions by the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615 (November 16, 1990). CHP subsequently advised that enforcement of certain of

the cargo tank requirements was being "withheld" because, after reviewing Nalco's application, CHP "has determined that certain regulations and enforcement policies may in fact be inconsistent with the HMTA." (In its earlier comments, CHP advised of "CHP rulemaking to repeal [a part of the cargo tank] requirement[s].")

The 1990 HMTUSA amendments adopted the "dual compliance" and "obstacle" criteria and added two further tests for finding preemption: Whether non-Federal requirements in five "covered areas" are substantially the same as Federal ones and whether non-Federal highway routing requirements satisfy Federal standards to be used by DOT. Section 1811(a) of 49 app. U.S.C. provides that, unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, "any requirement of a State or political subdivision or Indian tribe is preempted" when:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 1804(a)(4) \* \* \* [describing five "covered subject" areas] or section 1804(b) \* \* \* dealing with highway routing requirements].

With two exceptions, section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations under the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 app. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in section 1804(a)(4) are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning,



repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect \* \* \* 49 CFR 107.202(d).

The 1990 amendments to the HMTA also authorized any directly affected person to apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA, 49 app. U.S.C. 1811(c)(1), which had the effect of replacing RSPA's process for issuing inconsistency rulings. Notice of the application for a determination of preemption must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. *Id.* A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 app. U.S.C. 1811(e).

Because RSPA's prior process for issuing inconsistency rulings had effectively been replaced by the authorization in HMTUSA for DOT to issue administrative determinations of preemption, RSPA wrote to Nalco that it should either withdraw its application in Docket No. IRA-53 or reapply for a binding determination after RSPA had promulgated regulations to implement HMTUSA's amendments to the HMTA's preemption provisions. See RSPA's April 2 and May 14, 1991 letters in Docket No. IRA-53. See also RSPA's Proposed Rule on Amendments to the Hazardous Materials Program Procedures, 56 FR 36992, 36994 (August 1, 1991).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201-107.211, 107.227 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. "Any person aggrieved" by RSPA's decision on an application

for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

## II. Nalco's Application for a Preemption Determination

In a July 27, 1992 letter from its counsel, Nalco has applied for an administrative determination whether the California cargo tank requirements are preempted by the HMTA. The text of Nalco's application is set forth in full in appendix A to this notice. Copies of the attachments to Nalco's June 1990 application for an inconsistency ruling are incorporated by reference in Nalco's July 27, 1992 application. Those attachments are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit at the address and telephone number set forth in "Addressees" above:

1. California Vehicle Code, Division 14.7 (sections 34000-34102)
2. California Administrative Code, title 13, article 3 (sections 1160.1-1165) and article 6 (sections 1190-1197)
3. Form CHP 408A (Rev. 10-85), Application for Cargo Tank Registration
4. Form CHP 408B (Rev. 1-84), Cargo Tank Registration/Vapor Recovery System Certificate
5. Affidavit of Carla L. Minardi, Material Control Supervisor at Nalco's Carson, California facility, dated June 25, 1990.

## III. Further Comments

Nalco's application and all comments submitted in Docket No. IRA-53 have been placed in the docket of Nalco's present application for a preemption determination, No. PDA-6(R), and will be considered to the extent relevant and appropriate under the revised preemption provisions in the HMTUSA amendments to the HMTA. All further comments should be limited to the issue of whether the California cargo tank requirements are preempted by the HMTA. Comments should specifically address: (1) The "substantively the same," "dual compliance," and "obstacle" tests described in Part I, above, (2) whether the cargo tank requirements are "otherwise authorized by Federal law," and (3) any changes to the cargo tank requirements, and the enforcement of those requirements, in the time period since Nalco's application in Docket No. IRA-53, including but not limited to CHP's statements that certain requirements would be repealed and, until repealed, not enforced.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201-107.211.

Issued in Washington, DC on August 12, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

## Appendix A

July 27, 1992.

Mr. Alan I. Roberts, Associate Administrator for Hazardous Materials Safety Research & Special Programs Administration, Department of Transportation, Washington, D.C. 20590

Re: Docket No. IRA-53; Refiling of Nalco Application for Preemption Determination; State of California

Dear Mr. Roberts: On behalf of the Nalco Chemical Company of Naperville, Illinois, I hereby re-file the company's application for a preemption determination with regard to restrictions imposed by the State of



California that seriously impair the operations of the company. We note for the record that the company continues to be subject to the California requirements, with all of the unnecessary delay, expense, and inconvenience that represents. Your earliest response to this application, therefore, is greatly appreciated.

The original application prompted a Federal Register request for comments in Docket No. IRA-53. Upon passage of amendments to the Hazardous Materials Transportation Act involving certain revisions to the concepts of preemption, the application was returned to the company on April 2, 1991 with a request that it be re-filed to reflect the new statute, or withdrawn.

It was refiled at that time, and the re-filing addressed the effect of amendments in the Hazardous Materials Transportation Uniform Safety Act of 1991 (HMTUSA), Public Law 101-615, and also offered Nalco's rebuttal to certain comments that had been filed in response to the original Federal Register notice in IRA-53.

The application is once again re-filed, consistent with the latest procedural rules governing such applications, and once again we urge you to conclude this process expeditiously. The California requirements of which we complain are not "substantively the same" as the federal rules but, instead, add to them or vary them. In the words of the final rule in Docket No. HM-207A, the California provisions in the so-called covered areas for exclusive federal regulation do not conform in every significant respect to the federal requirements.

Because no significant changes are involved between this application and the one originally filed and subjected to public comment in Docket No. IRA-53, we urge you not to reopen this re-filing for additional public comment. By the certification that is attached to this re-filing, the State of California is advised of it and of their 45-day period to respond. In addition, we also are serving all parties who commented on IRA-53 with a copy of this re-filing. If any of them sense a further need to comment they may do so but, because of the extreme delay that has taken place during RSPA processing, we pray for a speedy ruling without an additional comment or rebuttal period.

**Introduction.** Original Section 112(a) of the Hazardous Materials Transportation Act, 49 U.S.C. 1811(a), read as follows:

1811. Relationship to other laws.—(a) General.—Except as provided in subsection (b) of this section, any requirement of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

Under the implementing regulations adopted by the agency in 49 CFR part 107, the determination that governed inconsistency determinations was whether the laws and regulations administered and enforced by the State either were in conflict with the agency's regulations, or stood as an obstacle to the accomplishment and execution of the purposes of Congress in enacting, the Hazardous Materials Transportation Act and of DOT in promulgating regulations under the Act. *Hines v. Davidowitz*, 312 U.S. 52, 67

(1941), cited in DOT rule making Docket No. HM-138, adopting preemption procedures in 49 CFR part 107, Sept. 9, 1976, 41 Fed. Reg. 38167.

As amended by HMTUSA, section 112(a) now reads:

(a) In General.—Except as provided in subsection (d) and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or Indian tribe is preempted if—

(1) compliance with both the State and political subdivision or Indian tribe requirement and any requirement of this title or of a regulation issued under this title is not possible,

(2) the State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title, or

(3) it is preempted under section 105(a)(4) or section 105(b).

The new law in subsections (1) and (2) incorporates the traditional conflict and obstacle tests found in 49 CFR part 107. Based upon the legislative history of the HMTUSA, it is Nalco's belief that nothing in subsections (1) and (2) quoted above was intended to do anything other than to incorporate into the statute the administrative standards that had been utilized by the agency and courts for the past 15 years. With respect to the so-called "conflict" and "obstacle" tests, nothing has changed.

That is not the case with new subsection (3), which references new sections 105(a)(4) and 105(b). Subsection 105(b) is not pertinent to this application and is not addressed further. Subsection 105(a)(4) now declares—

(a) General.—

\* \* \*

(A) General rule.—\* \* \* (U)less otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which is not substantively the same as any provisions of this Act or any regulation under such provision which concerns such subject, is preempted.

(B) Covered subjects.—The subjects referred to in subparagraph (A) are the following:

(i) The destination, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

As discussed below, the specific California provisions which are the subject of this application are not substantively the same as the Federal rules. In addition, insofar as the California rules pertain to package markings, packaging markings, documentation, and container design, they are explicitly

preempted by the clarifying provisions of section 105(a)(4). Here, too, these exclusively Federal subject matters have been defined by earlier administrative inconsistency rulings and parallel court decisions, many of which had been cited in Nalco's original application. Now, however, the statutory amendments provide Congressional affirmation of those decisions and elevate them beyond the level of non-binding administrative rulings. They also are elevated beyond any discussion of conflicts or obstacles, but unquestionably are preempted. Nothing in the recent procedural rule making on preemption determinations affects this application.

In addition, insofar as some of the California provisions are in conflict with, or pose an obstacle to the execution of the purposes of Congress in enacting such legislation, they are preempted, as noted further below. This is especially true with regard to the unnecessary transportation delays inherent in the California regulatory program. We do note that substantial improvements have been made in the paperwork management of California's program, particularly in Sacramento, but extensive and unnecessary delays continue to be encountered in the field.

The law under which the hazardous materials regulations are administered was a Congressional call for a single, national, uniform and consolidated fabric of hazardous materials transportation regulations. Nothing in the recent revisions nullifies this fact. In *Kappelman v. Delta Air Lines, Inc.*, 539 F.2d 165, 169-170 (D.C. Cir. 1976), the court of Appeals said:

\* \* \* (That the HMTA) was intended to vest in the Secretary or his delegate primary authority to regulate "any safety aspects of the transportation of hazardous materials" is evident from the plain language of the statute, *supra*, and the legislative history. The Senate Commerce Committee, in reporting out its version of the bill, made the following observation:

The prime difficulty, discussed by almost all of the witnesses in the June 12, 1974, hearing is that the fragmentation of regulatory power among the agencies dealing with the different modes of transportation blocks a coherent approach to the problem and creates a mass of conflicts of jurisdiction and regulation. The problem is heightened by the fact that most shipments involve more than one mode of transportation and thus are faced with differing regulations and enforcement authorities at different stages of a trip.

S. Rep. 93-1192, 93d Cong., 2d Sess. 8 (1974). Section 112 of the Senate bill, later incorporated into the Act by the conference committee, specifically preempted any state or local requirement inconsistent with any requirement of the act unless "the secretary determines . . . that such requirement affords an equal or greater level of protection to the public than is afforded by the requirements of this Act or regulations issued under this Act and does not burden interstate commerce." S. 4057, 93d Cong. 2d Sess., Sec. 112(a), (b) (1974). In reporting out that particular section, the Senate committee stated:



S. Rep. 93-1192, *supra* at 37. The conclusion to be drawn from these expressions of congressional intent is that the Hazardous Materials Transportation Act was aimed at a problem created at least in part by the existence of numerous regulatory bodies, and that it seeks to remedy the situation by consolidating the authority to regulate into one agency and thus promoting *uniformity of regulation*. (Emphasis added.)

Against this statutory, judicial and administrative background, reinforced by the recent amendments, it is appropriate to examine the particular California and Federal regulations involved.

**California State provisions.** Division 14.7 of the California Motor Vehicle code, entitled "Flammable and combustible Liquids," established a cargo tank inspection and identification system implemented by the California Highway Patrol for tanks containing these materials. Commenters on IRA-53 pointed out that parallel California requirements are applied to shipments of hazardous wastes, and we recommend that the principles expressed in this ruling be sufficiently general to answer questions regarding those similar requirements. Nalco does not ship hazardous wastes in its tanks and, accordingly, did not include the hazardous waste provisions in the original application, but the constraints or transportation and the impediments to a uniform regulatory system seem the same.

Section 34002 describes the California legislative policy recognizing the value of uniformity of controls within the State, but gives no consideration to the greater benefit of national uniformity.

Section 34003 for that code defines "cargo tank" to mean "any container having a volumetric capacity in excess of 120 gallons that is used for the transportation of flammable liquids or combustible liquids. This term includes pumps, meters, valves, fittings, piping, and other appurtenances attached to a tank vehicle and used in connection with the flammable liquids or combustible liquids being transported in the cargo tank."

Section 34019 of the Code purports to vest authority in the State to "adopt reasonable regulations with respect to the design and construction of cargo tanks and fire auxiliary equipment." The DOT regulations are mentioned in Section 34022 as "evidence of generally accepted safety standards," but the commissioner's design discretion clearly goes beyond the DOT tank specifications in 49 CFR. In comments, the State has said that it has elected to enforce only the federal requirements, yet the authority granted to the commissioner of the highway patrol certainly authorizes specifications in addition to the federal rules. In addition, one must recognize that the federal rules do not prescribe packaging requirements for combustible liquids, and yet the California inspectors are applying some unknown standard to determine the adequacy of these tanks. One might also note the metal identification plate required of nonspecification tanks (see the California comments of October 18, 1990, at page 3).

Section 34040 describes the required application for original or renewal

registration of cargo tanks and notes that, in addition to the name and address of the applicant, the application shall contain "such other information as the commissioner shall require."

Registration may be refused, suspended or revoked by the State under Sections 34042 and 34061 for (1) failure to pay the registration fee, (2) misrepresentation on the application, (3) failure of the cargo tank to comply with California regulations, or (4) failure or refusal by the applicant to make the cargo tank available for inspection by a duly authorized employee of the department upon reasonable notice. Renewal applications must be filed at least 60 days prior to expiration of the annual registration.

A key provision that highlights the inconsistency of this law with the federal regulatory program is Section 34044:

**Certificate of compliance:**

At the time the original or renewal registration is issued, the department shall issue a sticker, label, or other suitable device constituting a certificate of compliance to identify cargo tanks which are currently registered. The certificate of compliance shall be plainly affixed to the cargo tank. The size, shape, color, and design of the certificate of compliance and the positioning of such on the cargo tank shall be determined by the commissioner by regulation.

Section 34060 indicates the commissioner shall provide for the establishment, operation, and enforcement of an inspection service for cargo tanks, and shall designate duly authorized employees of the department who may inspect cargo tanks to determine whether the cargo tanks are designed, constructed, and maintained in accordance with the regulations adopted by the commissioner.

The certificate of compliance may be revoked or suspended under Section 34062 and if, upon inspection of any currently registered cargo tank, a tank is found to be in noncompliance with the regulations of the commissioner or DOT, or any other provision of Division 14.7 of the California Highway Code, the inspector may immediately remove the certificate of compliance from the cargo tank under Section 34063.

Section 34100 demands that no one drive, move or leave standing a cargo tank that requires registration. Under Section 34101, no tank vehicle shall be operated in California unless there is affixed to the cargo tank a valid certificate of compliance label. This is pictured in Section 1193 of Article 6 of Title 13 of the California Administrative Code, which implements this state statute. Paragraph (b) of this regulation states, "On portable tanks, the certificate shall be placed in a weatherproof holder permanently attached to the tank."

Regulatory section 1194 of Article 6 further says that each tank, in addition to the compliance certificate sticker, shall be issued a cargo tank or "CT" number. "The assigned CT number shall be displayed in characters not less than 2.54 cm (1 in.) in height on a contrasting background in one of the following locations," and then gives the sites. In lieu of this marking, "the CT number may be die-stamped on the manufacturer's plate." Thus, the California program requires three

additions to the tank—the certificate sticker, the weatherproof pouch in which the paper certificate (which is not the same as the sticker) is retained, and a "CT" marking. The sticker is serially numbered and the CT marking is a number, but the two numbers do not appear to correlate with each other or anything else. See the attachments to Nalco's original application for copies of the statute, regulations illustrating the sticker, application form, and an example of the paper certificates to be placed in the pouch.

**DOT Regulations.** The regulations in 49 CFR include provisions on all types of packaging for use in transporting hazardous materials, which include in Section 173.115 (re-numbered 173.120 in Docket No. HM-181), definitions for flammable and combustible liquids. DOT packaging include cargo tanks, portable tanks, intermodal tanks, and other bulk packaging. They also encompass a variety of intermediate bulk containers (IBCs) authorized under exemptions issued pursuant to 49 CFR part 107.

The DOT regulations, by specific discussion in Docket Nos. HM-42 and HM-102 establishing and defining the combustible liquid classification, affirmatively determined that federal packaging specifications were unnecessary, and federal regulations are limited to hazard communication (see 49 CFR 173.118a; renumbered 173.150(f) in Docket No. HM-181).

The applicant makes extensive use of an intermediate bulk container called the Nalco Porta-Feed Advanced Chemical Handling System in delivering a variety of products to customers. It is a complete distribution system including the return, cleaning and refilling of tanks. These products include flammable and combustible liquids as defined under the DOT regulations and California code. The tanks are constructed and marked in accordance with DOT Specification 57, 49 U.S.C. 178.253. They have a volumetric capacity in excess of the threshold level expressed in the California legislation and, therefore, they are within the California regulatory program described above.

Specification 57 tanks must also meet the general requirements of DOT Specification 51, prescribed in 49 CFR 178.251. Section 178.251-1(c) in turn requires compliance with 49 CFR 173.24, 173.24b and 173.32.

These several sections prescribe, in detail, the methods of design, construction, testing, operating and maintenance of this packaging. Section 178.251-7, entitled "Identification and marking," describes a metal certification plate that must be affixed permanently to each tank, with letters and numerals marked into the metal of the plate identifying the manufacturer, the specification, the design pressure for Specification 57, the serial number, original test date, tare weight, rated gross weight, capacity, and materials of construction. Other DOT specifications include similar metal plate or marking requirements.

Section 173.24 prescribes operational requirements for all hazardous materials packaging, including that packaging registered by California. Section 173.24(c)(1) prescribes DOT specification marking



requirements and also cross references and requires compliance with parts 178 and 179 insofar as construction specifications are concerned.

Section 173.32 sets forth DOT requirements on qualification maintenance and use of portable tanks other than Specification IM portable tanks. IM tanks are covered by Section 173.32a, b, c, and d. DOT-required qualification, maintenance and use of cargo tanks is described in Section 173.33. All of these tanks are subject to the California rules cited above.

Section 171.2(c), a general introductory section to the DOT hazardous materials regulations, declares that no person may represent, mark, certify, sell or offer a packaging as meeting the requirements of the regulations governing its use unless it is manufactured, fabricated, marked, maintained, reconditioned, repaired, or retested, as appropriate, under the DOT regulations. Paragraph (d) confirms that the initials "DOT" or "UN" as well as DOT exemption numbers are included within the representational markings encompassed by paragraph (c).

Section 178.0-2(b), among other things, notes that marking the DOT specification identification on a packaging "shall be understood to certify compliance by the manufacturer, that the functions performed by the manufacturer, as prescribed in this part, have been performed in compliance with this part."

The other general provisions relating to shippers and packaging are Section 173.22, entitled "Shipper's responsibility," and Section 173.22a, pertaining to use of packaging authorized under exemptions.

A shipper offering a hazardous material for transportation also completes a certification shipping documents, described and required under Section 172.203, in which materials are identified as being properly packaged and in proper condition for transportation.

Section 177.853(a) of the motor carrier section of the DOT regulations demands that every shipment of hazardous materials by motor vehicle shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination. See also Section 174.14 in the rail mode with regard to timely handling of shipments.

*Reasons for preemption of California requirements.* Applicant requests a preemption determination both because of the impossibility of meeting the California and the federal rules, primarily through the delays proscribed in Section 177.853, and because the California rules pose an obstacle to the accomplishment of the purposes of Congress in establishing a nationally uniform regulatory system, particularly with regard to hazard communication and packaging. In addition, the applicant notes that amendments adopted in the HMTUSA clearly delineate certain subject matters such as those involving communications and packaging, that unquestionably are federal provinces, without regard to their status under the conflict and obstacle tests.

The California provisions on marking of the packaging and the package, paperwork, and packaging specifications are in addition to

the federal rules and are not "substantively the same as" the federal rules. To the extent the rules are the same, the applicant makes no complaint, but when for example the federal rules require compliance certifications in the form of a tank specification plate and a shipping document, and California wants those certifications as well as several others, the California provisions are not substantively the same. They are unnecessarily redundant, excessive and statutorily preempted.

*Delay.* The California rules constitute a prior restraint on the movement of hazardous materials otherwise authorized and presumed safe for transportation under the federal regulations. In California, no tank may move until it is inspected and separately marked by a duly authorized representative of the California Highway Patrol, despite the fact that the tank bears a specification plate marking which is the certification of the marker of that tank, and is offered in accordance with rules on the maintenance and retesting of that tank, with the shipper's documentary certification of compliance. Despite full compliance with all of these federal certifications the shipment must be held until the administrative office in Sacramento at which the company's application is filed transmits its instructions to the California Highway Patrol office in the area. Then the applicant must wait further until it is convenient for the California State inspector to get there, conduct his own inspection, and apply his own marking to the tank and issue his certificate of compliance. The paper record of his inspection in the form of a card must be inserted in a plastic holder on the tank. Then the CT number issued by Sacramento then must be marked by painting or stenciling on the tank.

As shown from the affidavit attached to the original application, provided by Nalco's California representative managing compliance with this State program, tanks often had to wait as much as two weeks before being inspected. These tanks often were full as they awaited arrival of the inspector. Processing improvements and prepayment options have speeded the issuance of instructions to the field from the time Nalco's application originally was filed, but unnecessary delays still are encountered in the field with both flammable and combustible liquids, and the delays have been compounded by inspector's schedules, vacations, and sick leave. Please note the supportive comments supplied by other industries, confirming their experience with unnecessary delays under a variety of circumstances. The situation has improved, but still remains unnecessary and in conflict with Section 177.853.

Also as reflected in the affidavit attached to the original application, delays caused repackaging, diversion of traffic to locations more convenient to inspectors, and increased inventories at California distribution centers.

California, in its comments on the original application, attempted to declare that the delays were Nalco's fault, because the company filed too many applications at once. The company has gone to great lengths to cope with what is an illegal State system, filing in advance by Federal Express and

repeatedly phoning to minimize delays in preparing for the anticipated arrival of out-of-State tanks. Due to processing improvements since the original filing of Nalco's petition, filings in Sacramento by facsimile now are accepted and delays have diminished from their original extent, but they have not been eliminated. Once again, please note the comments of other parties who experienced delays, and note the acknowledgement in the State's comments that delays did occur. This is not a problem of Nalco's making.

Perhaps some companies experienced less frustration with the system because the marking applied by the California inspector is described as an annual permit. Nalco, however, cleans its Porta-Feed tanks after each use. The cleaning is thorough, and inevitably removes the California sticker, CT marking, and weatherproof pouch which cannot be reapplied by the company but must await another visit from an inspector before that tank may be used again. Other commenters noted the same experience with loss of stickers and other State-required markings. California, in its comments, suggested that attaching a metal plate is the answer, but we declare that a metal plate already is attached to the tank under the DOT tank specifications, and that no need is served by additional paper, paint, plastic or metal markings the State is requiring.

California officials have noted that intermodal tank traffic alone was expected to increase in numbers from approximately 15,000 to 60,000 by the end of 1990. This type of shipping practice is increasing in popularity. Regardless of the specific numbers, unquestionably the use of portable tanks is growing faster than the State's ability to manage it, and all projections are that delays will become more pronounced in the future.

We stress that we do not object to State enforcement of federal regulations, or the inspection of tanks where they are moving in commerce to assure compliance with federal regulations. We strongly object, however, to having to hold the tanks until California inspectors can get there, or to send them to destinations not otherwise contemplated in commerce. These delays have been discussed in numerous inconsistency rulings, notably in IR-28, City of San Jose, California, 55 FR 8884, March 8, 1990.

*Container specifications.* We also object strongly to the implications in the California statute that the California tank regulations and specifications may vary from the federal rules. We understand California's informal claim that, in practice, this does not occur frequently, but Sections 34019 and 34023 of the statute certainly vest that discretion in the California commissioner. Section 34022, although citing the DOT rules, gives equal weight to those of the National Fire Protection Association. Under the State statute, the DOT rules are given weight only as evidence of generally accepted safety standards.

Despite the specific DOT avoidance of federal packaging specifications for combustible liquids, these materials are subject to California packaging standards and are part of the inspector's review,



although we are unaware of the measure by which an inspector assesses such tanks.

Hazardous material packaging, including any tank container, is an exclusively federal province, and this has been noted repeatedly in inconsistency rulings and court decisions, from IR-2 (Rhode Island) through IR-8 (San Jose, CA) issued on March 8, 1990. Please note the explicit congressional concurrence in Section 105(a)(4)(B)(ii) and (v) as adopted by HMTUSA. We also draw specific attention to IR-22, in which the following discussion of cargo tank specifications appears:

Since as early as IR-2, in 1979, it has been clear that hazardous materials transportation cargo containment systems, packaging, accessories, construction, tests, equipment and hazard warning systems are areas of exclusive Federal jurisdiction because of the total occupancy of those field by the Hazardous Materials Regulations:

There are also certain areas where the need for national uniformity is so crucial and the scope of Federal regulations is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the Hazardous Materials Regulations. Cargo containment systems is one area where (DOT) believes this to be true. The Hazardous Materials Regulations contain extensive requirements for the packaging necessary for the safe transportation of hazardous materials. The (DOT) has looked at specific commodities and determined what types of container must be used to move them, including, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, etc. Uniform standards in this area ensure safe efficient interstate transportation. State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to the Hazardous Materials Regulations. (Citing IR-2, *supra*, at 75568.)

To the extent the California requirements for tanks vary at all from the federal rules, they are statutorily preempted. See also IR-7 through IR-15.

**Communications.** A unique California marking indicating the location of the emergency shut off valve is a precondition to obtaining a California certificate of compliance. It is unclear at this time whether such a marking is subject to enforcement in the State. If such a marking is appropriate, California should petition to have it added to the federal rules, and should not maintain its own unique requirements. To quote again from IR-2:

Hazard warning systems are another area where (DOT) perceives the Federal role to be exclusive. The (DOT) has thoroughly considered this subject and has issued regulations on marking and labeling of packages and placarding of vehicles in order to communicate the hazards of the materials contained therein. The effectiveness of these systems depends to a large degree on educating the public, especially emergency

response personnel. In order to widely disseminate information of its systems, the (DOT), among other things, conducts and supports educational programs and distributes informational literature. Additional, different requirements imposed by States and localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information.

California also requires three additions to the tank to communicate information with regard to State registration—the compliance sticker, the compliance certificate in a weatherproof pouch, and the CT number, all of which must be on or near the DOT specification plate.

We also object to the paperwork involved. The original Application for Cargo Tank Registration, CHP 408A (Rev. 10-86), was attached to the original Nalco application in IRA-53. The detail required in this application in many respects is redundant, unnecessarily duplicating the provisions prescribed in 49 CFR for the specification plate, record-keeping by the manufacturer for the specification plate, record-keeping by the manufacturer of the tanks, record-keeping by those who retest or repair the tanks, and shipping documents prepared by the shipper. Some of this information is gathered by the applicant, and some by the inspector. None of it appears necessary. Although the State has made some improvements in the years this application has been pending, the application process still remains unduly burdensome.

**Permit.** In response to a positive inspection, the California Highway Patrol issues a Cargo Tank Registration/Vapor Recovery System Certificate. This is a piece of paper, example attached. In addition, the inspector applies a color-coded certificate of compliance sticker to the tank itself. The tank may not be moved in California without this sticker. As noted in IR-22, because the local containment system and equipment requirements are intimately tied to a permitting system, that permitting system also is inconsistent. Quoting from IR-19:

Thus, the effect of that regulation is to require a PSC permit for hazardous materials transportation activities even if those activities are in full compliance with the HMTA and HMR. Activities in compliance with HMTA and HMR are presumptively safe, and permitting requirements relating to them cause confusion and delay and thus are inconsistent with the HMTA and the HMR under the "obstacle" test.

IR-19, 52 Fed. Reg. 24404, June 30, 1987.

**Conclusion.** The State of California, in its comments and in a Management Memorandum sent to Nalco's counsel on March 25, 1991, has acknowledged certain inconsistencies and announced the curtailment of enforcement of certain provisions pending rule making to eliminate those provisions. Nonetheless, the majority of the requirements of which Nalco complained still apply, namely the obligation to apply for inspection and for inspection to occur as a prior condition to transport within the State of a package authorized and certified as

appropriate for national distribution by the Department of Transportation regulations. These remaining difficulties pose the most serious problems, for which a ruling is requested.

Therefore, the applicant seeks a ruling finding the California cargo tank inspection program preempted insofar as it:

- (1) Vests or appears to vest discretion in California officials to establish tank specifications that differ in any respect from the federal rules;
- (2) Requires any additional markings on hazardous materials tanks (or pouches in which to insert California paperwork), either with regard to shut-off valves or indications of the tank having been registered or inspected;
- (3) Requires any permit, including the application for a permit or a certificate of compliance issued by a State official, as a precondition to movement of a tank otherwise marked as being in full compliance with the provisions of 49 CFR;
- (4) Requires inspection by a California official as a precondition to transportation;
- (5) Involves enforcement of preempted provisions;
- (6) Diverts traffic from otherwise permissible distribution patterns; or
- (7) Unnecessarily delays transportation in any mode.

In accordance with 49 CFR 107.205, I hereby certify that I have sent a copy of this application, with an invitation to comment for a period of 45 days, to the California official in charge of this program: Mr. Paul Horgan, Engineer, Department of California Highway Patrol, Hazardous Material Section, 2555 First Avenue, Sacramento, CA 95818.

I also have sent copies of the re-filing to all those who commented on the original notice in IRA-53. To repeat, we do not believe these matters would benefit from further publication in the Federal Register with a request for public comment. We believe the delay and consequent continuing costs to all those subject to the California restrictions outweigh the potential for any new party to raise an argument that has not already been made.

Please contact me directly if there are any questions on this application or its attachments.

Sincerely, Lawrence W. Bierlein, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, (202) 663-9245.

(The attachments for this application are identical to those filed with the original application and are not duplicated here.)  
cc: Willmore Hastings, Esq. Law Department, Nalco Chemical Co.  
David Deines, Hazardous Materials Transportation Administrator, Nalco Chemical Co.

[FR Doc. 92-19980 Filed 8-20-92; 8:45 am]

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# OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Review of Product and Country Practices Petitions, Public Hearings, and List of Articles to be Sent to the United States International Trade Commission (USITC) for Review

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Announcement of product and country practices petitions accepted for consideration in the 1992 Annual GSP Review; announcement of timetable for public hearings to consider petitions accepted for review; announcement of list of articles to be sent to the USITC for review.

**SUMMARY:** The purpose of this notice on the 1992 Annual GSP Review is (1) to announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP and to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0(a) and (b); (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971. Public versions of all documents relating to this review will be available for review by appointment with the USTR public reading room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

### SUPPLEMENTARY INFORMATION:

#### I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in title V of the Trade Act of 1974 (the 1974 Act) (19 U.S.C. 2461-2465), as amended. These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

#### A. Requests to Modify Product and Country Eligibility

Petitions have been submitted by interested parties or foreign governments (1) to designate articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary countries with respect to specific GSP eligible articles; or (3) to waive competitive need limits; or (4) to otherwise modify GSP coverage. In addition, petitions have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to the relevant criteria listed in subsection 502(b) or 502(c) of the 1974 Act.

As in previous reviews, petitions to add or remove products from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: The development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment, and worker rights; and the overall economic interests of the United States.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the 1974 Act. It is also possible to withdraw GSP treatment on a product from certain beneficiary developing countries, or to reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

As required under section 504(a) of the 1974 Act, the eligibility factors set forth in sections 501 and 502(c) will be considered with respect to decisions to withdraw, suspend or limit duty-free treatment with respect to any article or with respect to any country.

#### B. Information Subject to Public Inspection

All submissions should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2203.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "non-confidential").

#### C. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the TPSC, and that such review will take place.

#### II. Deadline for Receipt of Requests to participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (HTS) nomenclature.



Hearings will be held on October 14-16, 1992 beginning at 10 a.m. at a location in Washington, DC to be announced. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee by 5 p.m. September 23, 1992. Requests to present oral testimony in connection with the public hearings should be accompanied by fourteen (14) copies, in English, of all written briefs or statements, and should also be received by 5 p.m. on September 23. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted in fourteen (14) copies, in English, no later than 5 p.m. November 5, 1992. Parties not wishing to appear at the public hearings may submit post-hearing written briefs or statements also by November 5. Rebuttal briefs should be submitted in fourteen (14) copies, in English, by 5 p.m. November 19, 1992.

During 1992 and/or January 1993, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the Federal Register.

### **III. List of Articles Which May be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the USITC Will be Asked to Provide Advice**

In conformity with sections 503(a) and 131(a) of the 1974 Act (19 U.S.C. 2463(a) and 2151(a)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

On behalf of the President and in accordance with sections 503(a) and 131(a) of the 1974 Act, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the 1974 Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of the competitive need limits for the products identified in section C of the lists which follow.

### **IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)**

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review petitions to review the status of Bahrain, Fiji, Guatemala, Indonesia, Malawi, and

Oman as GSP beneficiary countries in relation to their practices regarding worker rights. Interested parties can participate in the review process as described in section II.

The decision whether to accept or reject a petition to review the GSP status of Haiti in relation to its worker rights practices has been deferred indefinitely.

Because review of the 1991 worker rights cases of El Salvador, Mauritania, Panama and Thailand has been extended, comments on the worker rights practices of these four countries will also be welcomed during the public hearing and comment process described in section II.

Also continued from the 1991 GSP Annual Review is a review of the GSP status of Peru relating to Peru's alleged expropriation of certain U.S. owned property without compensation. The review is being conducted pursuant to a petition filed by the American Insurance Group (AIG) as part of the 1989 GSP Annual Review. Comments on this review will also be welcomed during the public hearing and comment process described in section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review requests to review the GSP status of the Dominican Republic and Honduras concerning the alleged failure of each to provide adequate and effective protection for intellectual property rights.

Finally, pursuant to 15 CFR 2007.0(a), the TPSC has decided to defer a decision on whether to accept for formal review a petition alleging Jamaica's failure to provide for "equitable and reasonable" access to Jamaican markets until November 1, 1992. This petition relates to the recent imposition of a common external tariff on imports of rice.

**Frederick L. Montgomery,**  
*Chairman, Trade Policy Staff Committee.*

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## Annex

Case No.	HTS Subheading	Article	Petitioner
[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]			
A. <u>Petitions to add products to the list of eligible articles for the Generalized System of Preferences.</u>			
92-1	1302.39.00(pt.)	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Mucilages and thickeners, whether or not modified, derived from vegetable products: [Agar-agar; Mucilages and thickeners, whether or not modified, derived from locust beans, locust bean seeds or guar seeds] Other: Carrageenan	Algas Marinas S.A., Chile
92-2	1504.13.10	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Sardines, sardinella and brisling or sprats: In oil, in airtight containers: Smoked sardines, neither skinned nor boned, valued \$1 or more per kg in tin-plate containers, or \$1.10 or more per kg in other containers	Government of Thailand
92-3	2009.40.40 1/	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: Pineapple juice: [Not concentrated, or having a degree of concentration of not more than 3.5 (as determined before correction to the nearest 0.5 degree)] Other	Dole Packaged Foods Company, San Francisco, CA
92-4	2902.60.00	Cyclic hydrocarbons: Ethylbenzene	Petroflex Industria E Comercio S.A., Brazil
92-5	2906.12.00	Cyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Cyclanic, cyclenic or cyclosterpenic: Cyclohexanol, methylcyclohexanols and dimethylcyclohexanols	Rhodia, S.A., Brazil
92-6	4011.50.00	New pneumatic tires, of rubber: Of a kind used on bicycles	Government of Thailand
92-7	4107.10.00	Leather of other animals, without hair on, other than leather of heading 4108 or 4109: Of swine	Government of Slovenia
92-8	6505.90.8015	Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: [Hair-nets] Other: Of man-made fibers: [Knitted or crocheted or made up from knitted or crocheted fabric] Other: Not in part of braid: Nonwoven disposable headgear without peaks or visors	Boundary Healthcare Products Corporation, Columbus, MS
92-9	7202.50.00 2/	Ferroalloys: Ferrosilicon chromium	Minerals Marketing Corporation of Zimbabwe, Zimbabwe

1/ The TPSC requests advice on a waiver of competitive need for Thailand on the articles provided for in HTS subheading 2009.40.40.

2/ The TPSC requests advice on a waiver of competitive need for Zimbabwe on the articles provided for in HTS subheading 7202.50.00.



Annex  
2 of 3

Case No.	HTS Subheading	Article	Petitioner
<b>A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)</b>			
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock (con.): [Articles provided for in subheadings 8527.11.11 through 8527.29.00, inclusive]	
		Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: [Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks]	
		Other: [Combinations incorporating tape players which are incapable of recording]	
92-10	8527.31.50 1/	Other combinations incorporating tape recorders	Thomson Consumer Electronics, Inc., Indianapolis, IN
<b>B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.</b>			
		Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes: Doors and their frames and thresholds: French doors	
92-11	4418.20.00(pt.)		McPhillips Manufacturing Company, Inc., Mobile, AL
<b>C. Petitions to remove duty-free status from beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 3/</b>			
		Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Phthalic anhydride	
92-12	2917.35.00 (Mexico)		Aristech Chemical Corporation, Neville Island, PA
	and/or		
92-13	2917.35.00 (Venezuela)	Phthalic anhydride	do.
<b>D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.</b>			
		Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Acyclic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives: [Diethyl ether] Other: Ethers of monohydric alcohols: Methyl tertiary butyl ether	
92-14	2909.19.10(pt.) (Venezuela)		Ecofuel S.p.A., Italy

1/ The petitioner also requests a waiver of competitive need for Malaysia on the articles provided for in HTS subheading 8527.31.50.

2/ The countries named are the beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.



Annex  
3 of 3

Case No.	HTS Subheading	Article	Petitioner
92-15	4104.31.20 (Thailand)	<p>Leather of bovine or equine animals, without hair on, other than leather of heading 4108 or 4109:            [Whole bovine skin leather, of a unit surface area not exceeding 28 square feet (2.6 m<sup>2</sup>); Other bovine leather and equine leather, pretanned, tanned or retanned but not further prepared, whether or not split]</p> <p>Other bovine leather and equine leather, parchment-dressed or prepared after tanning:            Full grains and grain splits:            Buffalo</p>	Lackawanna Leather Company, Conover, NC
92-16	7614.90.20 (Venezuela)	<p>Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated:            [With steel core]            Other:            Not fitted with fittings and not made up into articles:            Electrical conductors</p>	Penn Central Corporation, Cincinnati, OH; Capital Wire & Cable Corporation, Plano, TX
92-17	8407.34.2080 (Brazil)	<p>Spark-ignition reciprocating or rotary internal combustion piston engines:            Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87:            Of a cylinder capacity exceeding 1,000 cc:            To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:            [Used or rebuilt]            Other</p>	General Motors Corporation, Detroit, MI
92-18	8521.10.0020 (Malaysia)	<p>Video recording or reproducing apparatus:            Magnetic tape-type:            Color, cartridge or cassette type:            [Not capable of recording]            Other</p>	Government of Malaysia
92-19	8527.11.60 (Malaysia)	<p>Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:            Radiobroadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radiotelephony or radiotelegraphy:            Combined with sound recording or reproducing apparatus:            [Combinations incorporating tape players which are incapable of recording]            Other:            [Radio-tape recorder combinations;            Radio-phonograph combinations]            Other</p>	Government of Malaysia; Santronics (M) SDN, BHD, Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA
92-20	8527.21.10 (Brazil)	<p>Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:            Combined with sound recording or reproducing apparatus:            Radio-tape player combinations</p>	Ford Motor Company, Dearborn, MI



**DEPARTMENT OF VETERANS AFFAIRS****Commercial Activities, Performance; Cost Comparison Schedules (OMB A-76 Implementation)**

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice.

**SUMMARY:** In order to apprise the public of cost comparison studies which the Department of Veterans Affairs will conduct for the purposes of OMB Circular No. A-76, the Department of Veterans Affairs serves notice to the public that the schedule of A-76 cost comparisons within the veterans health Administration (VHA) published on pages 43626-43628 of the *Federal Register* of October 28, 1985, has been changed. A number of cost comparison studies scheduled to begin earlier have been rescheduled to begin in Fiscal Year 1992, due to extensive construction, replacement initiatives, and other management requirements. The following comprehensive list of the Department of Veterans Affairs A-76 cost comparison studies scheduled includes rescheduled start dates for some of the previously published VHA cost comparisons and approved schedules to re-study activities.

**EFFECTIVE DATE:** March 10, 1992.

**FOR FURTHER INFORMATION CONTACT:**

Brodie C. Covington, Office of Policy and Planning, Management Analysis and Reports Service (008B3), Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2487. Questions relating to specific A-76 cost comparisons or local "service-contracting" should be referred to the Director of the VA facility concerned.

**OMB Circular No. A-76 Cost Comparison Schedules**

Field Facility/Activity	FTE	Schedule Date (fiscal year)
VA Medical Centers (VAMC)		
Laundry and Dry Cleaning services:		
Syracuse, NY (GOCO-COCO)	12.0	1992
St. Louis, MO (GOCO)	19.0	1992
Tuskegee, AL (GOCO-COCO)	19.0	1992
Portland, OR (GOCO)	12.0	1992
Phoenix, AZ (GOCO)	14.0	1992
Denver, CO (GOCO)	14.0	1992
Warehouse Services:		
Boston, MA	7.0	1992
East Orange, NJ	15.0	1992
Pittsburgh (UD), PA	11.0	1992
San Juan, PR	18.0	1992
Long Beach, CA	5.0	1992
West Los Angeles, CA	21.0	1992
San Francisco, CA	17.0	1992
Switchboard Services:		
Bronx, NY	9.0	1992
East Orange, NJ	11.0	1992

Field Facility/Activity	FTE	Schedule Date (fiscal year)
Brooklyn, NY	8.0	1992
Hines, IL	10.0	1992
Minneapolis, MN	8.0	1992
West Los Angeles, CA	11.0	1992
Transcription Services:		
Pittsburgh (UD), PA	13.0	1992
Allen Park, MI	13.0	1992
Salisbury, NC	9.0	1992
West Los Angeles, CA	5.0	1992
Portland, OR	11.0	1992
Chauffeur Services:		
East Orange, NJ	10.0	1992
Pittsburgh (UD), PA	11.0	1992
West Los Angeles, CA	39.0	1992
Fire Protection Services:		
Coatesville, PA	15.0	1992
Northampton, MA	15.0	1992
Mail/Messenger Services:		
West Los Angeles, CA	13.0	1992
Grounds Maintenance Services:		
Coatesville, PA	12.0	1992
St. Louis, MO	8.0	1992
Biloxi, MS	9.0	1992
West Los Angeles, CA	25.0	1992
Design Drafting Services:		
West Los Angeles, CA	6.0	1992
VA Supply Depots		
Warehouse Services:		
Hines, IL	Re-study	1994
Somerville, NJ	Re-study	1994
Bell, CA	Re-study	1994

Dated: August 14, 1992.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

[FR Doc. 92-20055 Filed 8-20-92; 8:45 am]

**BILLING CODE 8320-01-M**



# Sunshine Act Meetings

Federal Register

Vol. 57, No. 163

Friday, August 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:34 a.m. on Tuesday, August 18, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to probable failure of a certain insurance bank.

Recommendations concerning administrative enforcement proceedings.

Request for exemption from the cross-guaranty provisions of the Federal Deposit Insurance Act and issuance of notice of assessment of liability pursuant to those provisions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting

Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: August 18, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-20142 Filed 8-19-92; 3:16 pm]

BILLING CODE 6714-01-M

## FEDERAL MARITIME COMMISSION

**TIME AND DATE:** 10:00 a.m., August 26, 1992.

**PLACE:** 9th Floor Conference Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573-0001.

**STATUS:** Closed.

### MATTER(S) TO BE CONSIDERED:

1. Agreement No 202-011375: Trans-Atlantic Agreement.

### CONTACT PERSON FOR MORE

**INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92-20192 Filed 8-19-92; 3:18 pm]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, September 16, 1992.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** OPEN.

### MATTER TO BE CONSIDERED:

Consideration of possible amendments to the Mail-Order Merchandise TRR.

### CONTACT PERSON FOR MORE

**INFORMATION:** Bonnie Jansen, Office of Public Affairs: (202) 326-2178, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 92-20200 Filed 8-19-92; 3:19 pm]

BILLING CODE 6750-01-M



# Corrections

Federal Register

Vol. 57, No. 163

Friday, August 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-433-804, et al.]

**Initiation of Countervailing Duty Investigations and Postponement of Preliminary Determinations: Certain Steel Products From Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and the United Kingdom**

#### Correction

In notice document 92-17567 beginning on page 32970 in the issue of Friday, July 24, 1992, make the following corrections:

1. On page 32973, in the first column, in the last full paragraph, in the next to last line, after "7211.90.0000" insert "7212.40.1000".

2. On the same page, in the second column, in the last paragraph, in the fourth line from the end, after "7210.70.3000" insert "7210.90.9000".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER92-720-000, et al.]

**Century Power Corp., et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings**

#### Correction

In notice document 92-17701 beginning on page 33335 in the issue of Tuesday, July 28, 1992, in the second column, under 4. Wisconsin Electric Power Co. "[Docket No. ER92-72-000]" should read "[Docket No. ER92-722-000]".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 131

[Docket No. 91P-0090/CP]

**Evaporated Milk; Proposed Amendment of the Standard of Identity**

#### Correction

1. In proposed rule document 92-17182 beginning on page 32470 in the issue of Wednesday, July 22, 1992, make the following corrections:

2. On page 32471, in the first column, in the fourteenth line, "or" should read "so".

3. On the same page, in the same column, in the first full paragraph, in the first line, "ADPT" should read "ADBI".

4. On page 32472, in the first column, in the first full paragraph, in the twelfth line, "in" should read "is".

5. On the same page, in the same column, in the same paragraph, in the thirteenth line, "identify" should read "identity".

6. On the same page, in the same column, in the second full paragraph, in the second line, insert "be" after "not".

7. On the same page, in the same column, in the same paragraph, in the fifth line, "identify" should read "identity".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-050-02-4212-14;AZA 25294]

**Arizona: La Paz County Realty Action for the Noncompetitive Sale of Public Lands**

#### Correction

In notice document 92-18205 appearing on page 34142, in the issue of Monday, August 3, 1992, make the following correction:

In the second column, under **DATES**, in the last line "April 30, 1992," should read "April 30, 1993,".

BILLING CODE 1505-01-D

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AF84

**Direct Service Connection (Post-Traumatic Stress Disorder)**

#### Correction

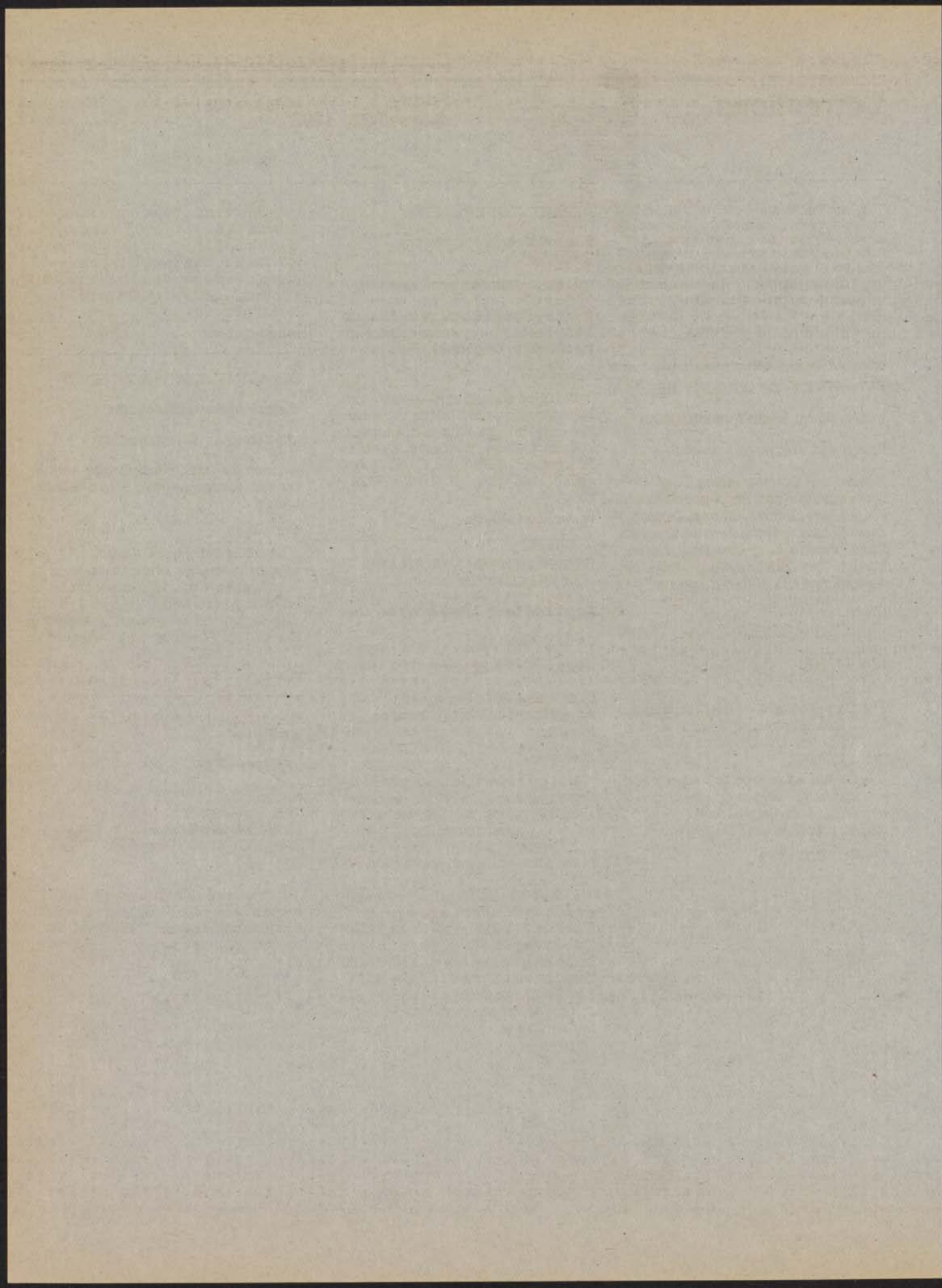
In proposed rule document 92-18503 beginning on page 34536 in the issue of Wednesday, August 5, 1992, make the following correction:

#### § 3.304 [Corrected]

On page 34537, in the first column, in § 3.304(f), in the fourth line, "experienced" should read "experience".

BILLING CODE 1505-01-D







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Friday  
August 21, 1992

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**Part II**

**Department of  
Education**

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**Intent To Repay to the Louisiana State  
Department of Education Funds  
Recovered as a Result of a Final Audit  
Determination; Notice**



## DEPARTMENT OF EDUCATION

# Intent To Repay to the Louisiana State Department of Education Funds Recovered as a Result of a Final Audit Determination

**AGENCY:** Department of Education.

**ACTION:** Notice of intent to award grantback funds.

**SUMMARY:** Under section 456 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e (1982), the Secretary of Education intends to repay to the Louisiana State Department of Education, State Educational Agency (SEA), an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education as a result of a final audit determination. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

**DATES:** All comments must be received on or before September 21, 1992.

**ADDRESSES:** Comments concerning the grantback should be addressed to William D. Tyrrell, Sr., U.S. Department of Education, 400 Maryland Avenue SW., room 3611, Switzer Building, Washington, DC 20202-6132

**FOR FURTHER INFORMATION CONTACT:** William D. Tyrrell, Sr. Telephone: (202) 205-8825. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

## SUPPLEMENTARY INFORMATION:

### A. Background

The Department has recovered \$756,605 from the SEA for claims arising from the audit conducted by the Region VI Office of Inspector General covering fiscal years 1982 through 1985.

The claims involved the SEA's administration of the Assistance to States for Education of Children with Disabilities program, authorized under Part B of the Individuals with Disabilities Education Act, a program that addresses the special education needs of children with disabilities aged 3 through 21 in local educational agencies (LEA).

The August 11, 1987, final audit determination of the Assistant Secretary for Special Education and Rehabilitative Services found that the SEA was required to refund \$912,678 to the Department because it did not use program funds appropriately during fiscal years 1982 through 1985. In

particular, the SEA failed to design programs to benefit children with disabilities exclusively, used support service funds to fund a position that was not related to the needs of these children, displaced local funds, and failed to maintain appropriate records while funding projects that were not designed to meet the priority needs of children with disabilities. The SEA appealed the determination of the Assistant Secretary to the Education Appeal Board (EAB). On March 10, 1988, the U.S. Department of Education reduced the original claim by \$156,073 to \$756,605 after a determination was made that insufficient evidence was available to justify the disallowances in two specific areas of the audit. The EAB issued its decision in the matter on August 8, 1988, sustaining the determination of the Assistant Secretary and affirming the claim for return of \$756,605 from the SEA. This decision became the final agency action of the U.S. Department of Education on October 18, 1988. The SEA appealed to the U.S. Court of Appeals for the Fifth Circuit. The Court of Appeals decided the case on August 8, 1989, in favor of the U.S. Department of Education *Louisiana State Board of Elementary and Secondary Education v. U.S. Department of Education*, No. 88-4802 (5th Cir. 1989). The SEA has submitted payment of the amount in full settlement of all claims arising from the audit.

### B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(a) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(b) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

### C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback totaling \$567,454, which is 75 percent of the principal amount of the recovered funds, and has submitted a plan for use of the grantback funds to meet the special education needs of children with disabilities. The State's plan is to purchase the technological resources to facilitate Louisiana's five-year plan to improve integrated educational services for students with disabilities. The purpose of the five-year plan is to—

(a) Provide increased integrated educational opportunities for students with low incidence and severe disabilities;

(b) Provide increased regular education opportunities for students with mild disabilities; and

(c) Increase and improve transition services.

The grantback funds will be used for—

(a) Completing a project, already underway, to provide assistive devices to children with low-incidence and severe disabilities who need equipment or materials, or both, to increase their ability to communicate and access additional educational opportunities in integrated settings;

(b) Providing technological and curriculum materials for students with mild and moderate disabilities to improve their ability to communicate and participate in additional educational opportunities in regular education settings; and

(c) Providing the technological equipment needed for training in the area of transition services. The purchase of the equipment and materials included in the grantback request will follow all State bid laws and requirements.

The SEA has established a series of Learning Resource Centers (LRCs) that provide materials and equipment to local parishes on a loan basis. These already established centers will be used to house and distribute the curriculum and materials which are reflected in the grantback budget. These technological resources, when used, will improve integrated educational services for students with disabilities. These technological resources will enhance transition services and increase the



educational opportunities for integrated education for children with disabilities.

#### **D. The Secretary's Determinations**

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456(a) of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

#### **E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement**

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Louisiana SEA under a grantback arrangement. The grantback award would be in the amount of \$567,454, which is 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the audit.

#### **F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made**

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 1992, in accordance with section 456(c) of GEPA.

(c) The SEA will, not later than January 1, 1993, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

Dated: August 17, 1992.

(Catalog of Federal Domestic Assistance Number 84.027, Handicapped State Grants)

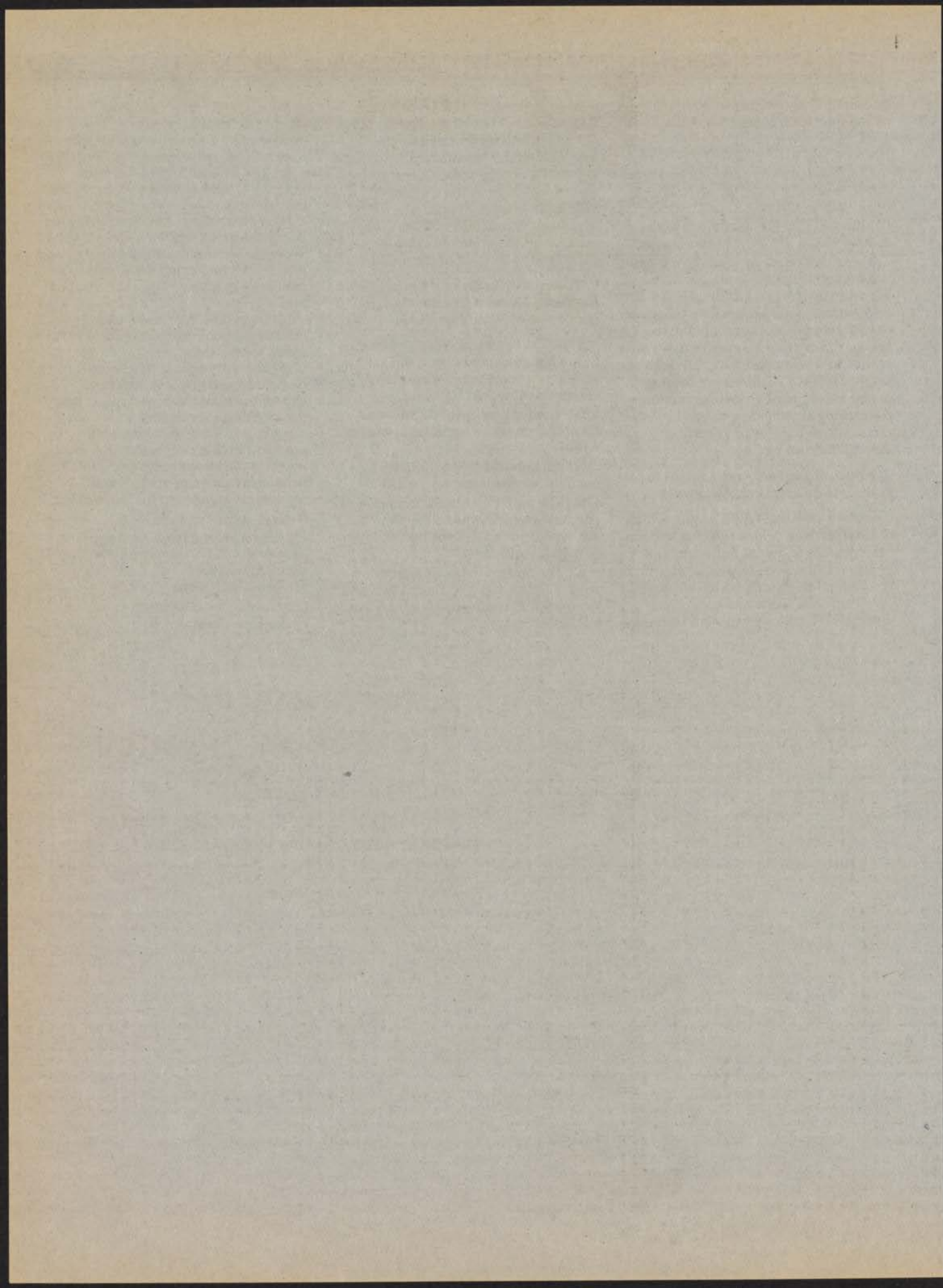
Lamar Alexander,

Secretary of Education.

[FR Doc. 92-19972 Filed 8-20-92; 8:45 am]

BILLING CODE 4000-01-M







# Testis Great Federal Paper

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Friday  
August 21, 1992

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## Part III

### Environmental Protection Agency

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40 CFR Parts 156 and 170

Worker Protection Standard, Hazard  
Information, Hand Labor Tasks on Cut  
Flowers and Ferns Exception; Final Rule,  
and Proposed Rules



**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 156 and 170**

[OPP-300164A; FRL-3774-6]

RIN 2070-AA49

**Worker Protection Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is issuing final revisions to its regulations governing the protection of workers from agricultural pesticides. These revised regulations expand the scope of the standard to include not only workers performing hand labor operations in fields treated with pesticides, but employees in forests, nurseries, and greenhouses, and employees who handle (mix, load, apply, etc.) pesticides for use in these locations. The regulations expand requirements for warnings about applications, use of personal protective equipment, and restrictions on entry to treated areas, and add new provisions for decontamination, emergency assistance, contact with handlers of highly toxic pesticides, and pesticide safety training. Pesticide registrants are required to add appropriate labeling statements referencing these regulations and specifying application restrictions, restricted-entry intervals (REIs), personal protective equipment (PPE), and notification to workers of pesticide applications. EPA has determined that its present regulations are inadequate to protect agricultural workers and pesticide handlers who are occupationally exposed to pesticides. The revised regulations are intended to reduce the risk of pesticide poisonings and injuries among agricultural workers and pesticide handlers through implementation of appropriate exposure reduction measures.

**EFFECTIVE DATE:** This rule will become effective October 20, 1992.

**ADDRESSES:** Comments should be submitted in triplicate and addressed to the Document Control Officer (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments should bear the document control number OPP-300164A and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, at the Office of Pesticides Program's Document Control Office, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** By mail: James J. Boland, Acting Chief, Occupational Safety Branch (H7506C), Field Operations Division, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and room number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7666.

**SUPPLEMENTARY INFORMATION:** This Federal Register notice discusses the background and events leading to this final rule revising the Worker Protection Standard; summarizes the public's comments on the provisions of the proposed rule (53 FR 25970, July 8, 1988); provides EPA's response to comments and final determination with respect to provisions of the revised standard; discusses implementation of the revised standard by registrants, the Agency, the States, and pesticide users; and provides information on the applicable statutory and regulatory review requirements. More detailed discussion of the public comments and the Agency's response are found in the Response to Public Comments in the docket. The Agency is interested in receiving additional comments, data, and other evidence concerning both the general prohibition of routine hand labor tasks during a restricted-entry interval and the mechanism for granting exceptions to that prohibition. Written comments, data, or other evidence concerning these topics should be submitted on or before October 20, 1992. Upon review of these comments, EPA may modify this final rule's restrictions upon entering an area that remains under a restricted-entry interval or the process by which the exception requests are considered. As an aid to the reader, the following is an outline of the contents of this document:

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**I. Background****A. Legal Authority**

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 135) was enacted in 1947. Since then, pesticide products have been subject to Federal regulation under FIFRA. Today, they are required to be registered with EPA.

In 1972, FIFRA was amended by the Federal Environmental Pesticide Control Act (7 U.S.C. 136). The amendments broadened Federal pesticide regulatory authority by making it "unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling" (7 U.S.C. section 136j(a)(2)(G)), and they provided civil and criminal penalties for violations of FIFRA (7 U.S.C. 136l). The amendments also authorized EPA to provide regulations to carry out FIFRA (7 U.S.C. 136w(a)). These new or revised provisions augmented EPA's authority to protect humans and the environment from unreasonable adverse effects of pesticides.

During the congressional consideration of FIFRA amendments in 1972, it was emphasized that FIFRA was to be implemented by EPA to protect employees who might be exposed to pesticides or their residues. The legislative history of the 1972 amendments indicates an express intent of Congress that farmers, farmworkers, and others be afforded such protection under FIFRA. The Senate Committee on Agriculture and Forestry rejected the need to include a specific provision in FIFRA to protect farmworkers. However, the Committee found "protection of man and the environment" to be a broad term encompassing farmers, farmworkers, and others who come into contact with pesticides, and stated that:

The Committee believes there can be no question...but...that the bill [The Federal Environmental Pesticide Control Act of 1972]



(FEPCA)] requires the Administrator to require that the labeling and classification of pesticides be such as to protect farmers, farm workers, and others coming in contact with pesticides or pesticide residues. (S. Rep. No. 92-883, (Part II), 92nd Congress, 2nd Session at 43-46 (1972) (Agriculture and Forestry), U.S. Code Congressional and Administrative News 1972, p. 4063).

#### B. History of the Worker Protection Standard

In 1974, EPA promulgated the regulations found at 40 CFR part 170 pursuant to its authority under FIFRA (39 FR 16888; May 10, 1974). That part, entitled "Worker Protection Standards for Agricultural Pesticides," dealt only with the pesticide-related occupational safety and health of "farm workers performing hand labor operations in fields after ground (other than those incorporated into the soil), aerial, or other type of application of pesticides" (40 CFR 170.1). Part 170 consisted of four basic requirements: (1) A prohibition against spraying workers and other persons; (2) a general reentry interval for all agricultural pesticides prohibiting reentry into treated fields until the sprays had dried or dusts had settled and longer reentry intervals for 12 specific pesticides; (3) a requirement for protective clothing for any worker who had to reenter treated fields before the specific reentry period had expired; and (4) a requirement for "appropriate and timely" warnings. Soil-incorporated pesticides, mosquito abatement treatments and related public pest control programs, greenhouse treatments, livestock and other animal treatments, and treatments of golf courses and similar nonagricultural areas were exempted from coverage.

EPA's authority to promulgate such requirements, including reentry interval standards designed to limit workers' occupational exposure to pesticides and pesticide residues (such as those in part 170) is established, not only in the legislative history but in the courts. See, e.g., *Organized Migrants in Community Action v. Brennan (OMICA)* 520 F.2d 1161 (D.C. Cir. 1975) and *Public Citizen Health Research Group, et al. v. Aucter* 702 F.2d 1150 (D.C. Cir. 1983).

In *OMICA* the Court of Appeals stated: Our own analysis of the statute [FIFRA] and its legislative history confirms EPA's ample statutory authority to issue field reentry standards to protect farm workers. (520 F.2d at 1165) . . . Even before FEPCA's enactment, EPA and predecessor agencies construed the labeling provisions of FIFRA to require field reentry limitations for many pesticides. See 39 Fed. Reg. 16888 (1974). However, these were merely informational until FEPCA made them enforceable. See *id.* at 16889. It is clear from an examination of the explanatory statement accompanying EPA's proposed and

final rules that these standards (part 170) were promulgated and implemented under the labeling authority given EPA by FEPCA. (520 F.2d at 1168).

In June 1980, EPA announced a Label Improvement Program (LIP) under which labels of pesticide products are upgraded, improved, or revised to meet current labeling standards. On March 29, 1983, EPA issued a Farm Worker Safety LIP (PR Notice 83-2) calling for certain information to be placed on labels of "all outdoor agricultural use products which are applied to crops whose culture requires hand labor." In effect, PR 83-2 implemented 40 CFR part 170, promulgated 9 years before. PR 83-2 did not include mixing, loading, flagging, or equipment operation because part 170 was limited to farmworkers engaged in hand labor. Greenhouse treatments and forestry uses were excluded for the same reason. PR 83-2 defined the term "hand labor tasks" to mean crop production activities such as harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, summer pruning, moving irrigation equipment, and other tasks performed in the field by farmworkers who could have substantial contact with pesticide-treated surfaces such as plants and plant parts.

An Agency review of 40 CFR part 170, conducted in 1983, concluded that the regulations were inadequate to protect agricultural workers. The review revealed concerns about enforceability and coverage and cited continuing reports of worker poisonings. In 1984, EPA published an Advance Notice of Proposed Rulemaking that announced its decision to revise part 170 and solicited public comment (49 FR 32605; August 15, 1984). Most comments favored revising part 170, but they expressed wide differences in opinion about the revisions needed.

EPA subsequently initiated a process of public participation known as regulatory negotiation. An Advisory Committee consisting of 25 representatives of farmworker unions, health care providers, agricultural trade associations, commercial pesticide applicators, pesticide registrants, State health and agriculture agencies, EPA, and other Federal agencies was constituted under the Federal Advisory Committee Act (Pub. L. 92-463). Negotiations began in November 1985. In early 1986, after several meetings, the representatives of the farmworker unions ended their participation. As a result, regulatory negotiation consensus was not possible.

EPA issued a notice of proposed rulemaking (NPRM) in the July 8, 1988, *Federal Register*. The proposed revisions

expanded the scope of part 170 to include all employees performing tasks related to the production of agricultural plants on farms, in forests, nurseries, and greenhouses, and handlers of pesticides intended for use on agricultural plants in these locations. The NPRM also expanded requirements for notification to workers about applications, use of personal protective equipment (PPE), and restrictions on entry to treated areas, and proposed to add new provisions for decontamination, emergency medical assistance, maintaining contact with handlers of highly toxic pesticides, cholinesterase monitoring, and training. EPA also proposed to promulgate labeling regulations to require statements pertaining to general worker protection, entry intervals, personal protective equipment, and posting of treated areas.

The proposed revisions were based on five major concerns. First, the Agency believed that data developed after 1974 on pesticide poisonings of workers revealed the inadequacies and shortcomings in the scope and requirements of part 170. Many of these data were placed into the record by EPA and other parties to this rulemaking. Second, the Agency stated that the enforcement experiences of EPA and the States over the years had led the Agency to conclude that a clearer exposition of liability and responsibility provisions would lead to improved worker protection. Third, the Agency had determined that since the reregistration program would not be completed for some pesticides for several years, measures were necessary to protect workers in the interim. Fourth, because EPA believed that protection should be provided to other workers, it proposed expanding coverage to workers not covered by the present part 170. Finally, the Agency noted the increased use of organophosphate and carbamate pesticides since 1974. These pesticides tend to be more acutely toxic to humans than pesticides commonly used in agriculture in the past.

During July and August of 1988, EPA held more than 15 public meetings, mostly in agricultural areas of the country, to explain the proposed rules and to answer questions (see 53 FR 25970; July 8, 1988). The major meetings were held in: Washington, DC; Casa Grande, AZ; Fresno, CA; Greeley, CO; Orlando, FL; Forest Park, GA; Caldwell, ID; Des Moines, IA; Augusta, ME; Hagerstown, MD; Salisbury, MD; Holyoke, MA; New Paltz, NY; Maumee, OH; McAllen, TX; and Yakima, WA.



In response to the notice of proposed rulemaking, the Agency received 380 comments totaling more than 2,000 pages.

After a careful review and analysis of the comments and data in the record, the Agency is promulgating this final rule revising 40 CFR part 170 (Worker Protection Standard) and adding part 156, subpart K (Labeling Requirements for Pesticides and Devices).

## II. Organization and Summary of the Final Rule

### A. Organization of the Final Rule

Many comments stressed that the proposal was confusing. EPA believes that some of the confusion stemmed from the format of the proposed revisions. The proposed revisions included requirements for workers at four different use sites and addressed many differing activities including hand-labor activities, non-hand-labor activities, early-entry activities, and handling activities.

EPA has changed the format of the final rule. The revisions to part 170 are now in the form of two separate, more self-contained standards—one for pesticide handlers and one for workers on all covered sites: Farms, forests, greenhouses, and nurseries. This organization will reduce confusion and will make it easier for employers and their employees to understand the requirements, to comply with the provisions, and to propose amendments if data so warrant in the future.

### B. Summary of the Worker Protection Standard

The provisions in the revised Worker Protection Standard are directed toward the working conditions of two types of employees: those who handle agricultural pesticides (mix, load, apply, clean or repair equipment, act as flaggers, etc.) and those who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests. There are three types of provisions intended to: (1) Eliminate or reduce exposure to pesticides; (2) mitigate exposures that occur; and (3) inform employees about the hazards of pesticides. A summary of these provisions is given here. Discussions of these provisions and summaries of the public's comments on these provisions are contained in Unit III of this preamble. More detailed discussion of the public's comments can be found in a document entitled "Summary of the Public Comments and the Agency's Response, Worker Protection Standard" in the docket.

1. *Provisions to eliminate or reduce pesticide exposures.* Exposure to pesticides can be reduced by excluding workers from areas treated with pesticides, prohibiting handlers from applying a pesticide in a way that will expose workers or other persons, and protecting handlers during handling activities. Hence, the final rule contains several provisions to achieve this purpose such as application restrictions, entry restrictions, use of personal protective equipment, and notification to workers of treated areas so they can avoid inadvertent exposures.

a. *Application restrictions.* Three types of restrictions apply during applications:

i. No pesticide may be applied in a manner that will cause it to contact any person except an appropriately trained and equipped handler.

ii. No person, except an appropriately trained and equipped handler, may be in an area or, in some cases, near an area being treated with pesticides.

iii. The employer must make sure that any handler who is handling a pesticide with a skull and crossbones symbol on the label is monitored visually or by voice at least every 2 hours. Handlers using fumigants in greenhouses must be in continuous visual or voice contact with another handler.

b. *Use of personal protective equipment (PPE).* Additional provisions to minimize exposure are directed toward the use of PPE. The appropriate PPE based on the product's acute toxicity by route of exposure (dermal, ocular, or respiratory) will be specified in the product labeling for the work activity (handling or early entry).

i. Persons handling the pesticide must wear the PPE specified for handlers on the labeling of the pesticide being used.

ii. Persons entering a treated area before the expiration of a restricted-entry interval (REI) who will contact anything that has been treated must wear PPE specified in the labeling for early entry.

iii. When PPE is required by the product labeling for the activity to be performed, the employer must: (1) Provide the PPE to each worker or pesticide handler; (2) clean and maintain the PPE correctly; (3) make sure that each handler or worker wears and uses the PPE correctly; (4) prevent workers or handlers from wearing home or taking home contaminated PPE; and (5) take action to prevent heat stress, if the work and the PPE might cause heat stress.

c. *Entry restrictions.* Access to pesticide-treated areas is limited after an application while the pesticide may still present a hazard. EPA's current

practice is to set entry intervals (REIs) based on data collected and evaluated for this purpose, but many older pesticides in agricultural use today may not have been evaluated for entry hazards. The collection and evaluation of such data may take several years. The final rule establishes REIs for all pesticide products which are used in the production of agricultural plants and for which REIs have not been set according to current standards. Previously established entry intervals will be retained if they are based on entry data that meet Agency guidelines. Any other previously established entry interval is considered to be "interim" and will be retained only if it is longer than the REI established by part 170.

In general, a 48-hour REI is established for any product containing an active ingredient that is in toxicity category I (most acutely toxic category) because of dermal toxicity or skin or eye irritation. The REI is extended to 72 hours in arid areas if any such active ingredient is an organophosphate and the product is applied outdoors. A 24-hour REI is established for any product containing an active ingredient that is in toxicity category II (moderately toxic) because of dermal toxicity or skin or eye irritation. A 12-hour interval is established for all other products.

Workers are restricted from entering a pesticide-treated area for the REI specified on the product labeling. With narrow exceptions, the time a worker may be in areas under an REI is limited and other safety measures are required. The activities that may take place in an area under an REI are limited to tasks that do not require contact with treated surfaces, short-term tasks that do not require hand labor and tasks that may be necessary in an emergency to save a crop. In addition, affected persons or organizations may request that the Agency grant case-by-case exceptions to the entry restrictions if they believe their industries, crops, or crop practices would bear an unreasonable economic burden under such restrictions.

d. *Notification of applications.* To help workers avoid inadvertent exposures to pesticide-treated areas, the Agency is requiring employers to inform workers of where pesticides have been applied on the agricultural establishment. This notification may take one or more forms:

i. All agricultural employees who may come near a treated area must be notified, either orally or by posting treated areas with warning signs, of pesticide applications and areas under an REI on agricultural establishments.



ii. For selected pesticide products for which inadvertent early entry could be especially hazardous, treated areas must be posted with warning signs, and oral warnings must be given to workers.

iii. For outdoor uses, there are no notification requirements if workers will not be within 1/4 mile of the treated area during the application or before the expiration of the REI.

iv. Treated areas must be posted for all pesticide applications in greenhouses if workers will be in the greenhouse during the application or before the expiration of the REI.

## 2. Provisions to mitigate exposure —

a. *Decontamination.* Employees handling pesticides must be provided an ample supply of water for washing splashed or spilled pesticides off themselves and for washing after the pesticide-handling activity is complete.

Workers entering treated areas where, within the last 30 days, a pesticide has been applied or an REI has been in effect, must be provided facilities for washing.

b. *Emergency assistance.* Although the Agency believes the precautions such as observing application restrictions and entry restrictions, using PPE, and notifying workers of applications will decrease the frequency of acute pesticide poisoning or injury incidents, medical emergencies involving agricultural workers and handlers may still arise. In such cases, prompt medical treatment is necessary to mitigate the extent of the injury or poisoning. Hence, the rule contains several duties related to emergency care:

i. The name and location of the nearest medical facility must be posted at a central location.

ii. If an agricultural worker or handler may have been poisoned or injured by a pesticide, the employer must make available transportation to a medical care facility.

iii. The employer must provide to the employee, or to medical personnel treating the employee, information about the pesticide(s) to which the worker or handler may have been exposed.

3. *Provisions to inform employees about pesticide hazards.* Since training and information are essential components of a successful occupational risk-reduction strategy, the final rule contains several requirements relating to providing pesticide safety training and information to employees. These are requirements for: (1) Pesticide safety training for all workers and handlers, (2) use of a pesticide safety poster, (3) access to labeling information, and (4) access to information about what

pesticides have been used on the establishment.

a. *Training.* All agricultural workers must have basic pesticide safety training. All handlers must have basic pesticide safety training, training on the handling of pesticides, and training on the use of PPE.

A poster summarizing the elements of basic pesticide safety must be posted at a central location on the agricultural establishment to reinforce the safety training.

b. *Access to product-specific information.* Pesticide handlers must have knowledge of and access to the information on the labeling of the product they are using; early-entry workers must have knowledge of the information on the labeling. Employees must have access for 30 days after the application and any REI to a centrally located listing of information about any product used on any area on the establishment.

## C. Summary of Risk-Benefit Analysis

EPA estimates that at least tens of thousands of acute illnesses and injuries and a less certain number of delayed onset illnesses occur annually to agricultural employees as the result of occupational exposures to pesticides used in the production of agricultural plants. These injuries and illnesses continue to occur despite the protections offered by the existing part 170 and by product-specific regulation of pesticides. Therefore, the Agency has determined that occupational exposures of agricultural employees to pesticides and pesticide residues continue to cause adverse effects in a broad range of agricultural sectors and that it needs to provide additional regulatory protection for such workers.

EPA could, as an alternative to issuing the pesticide product-specific aspects of this regulation, delay action until the development of additional product-specific data and analyses permit a product-specific solution. These data and analyses, in large part, will be generated through the ongoing reregistration process, but, under the present conditions, will not be completed until the year 2002 at the earliest.

EPA has chosen to issue a rule at this time, because EPA cannot, through a product-by-product review, quickly or adequately reduce the incidence of pesticide-related injuries and illnesses. The Agency's workload precludes rapid reevaluation of large numbers of products, even if the needed data were available now. Moreover, many of the protections of this rule are not product-specific. Instead, they establish general

protections, such as training, notification, and decontamination, that are also vital in protecting agricultural employees from risks associated with pesticide use.

The Agency believes that this rule will reduce substantially the current illness and injury incidents at modest cost to agricultural employers, pesticide handler employers, and registrants. The rule requires: (1) Restrictions on entry by agricultural employees into pesticide-treated areas for, depending on pesticide toxicity, 12 to 48 hours (72 hours in certain limited circumstances) after application, (2) the use of PPE for persons handling agricultural pesticides and for persons who must enter pesticide-treated areas before the expiration of the REI, (3) training for agricultural employees about hazards from exposures to pesticides, (4) that information be provided to pesticide handlers and early-entry workers, and be available to other agricultural employees, about the specific pesticides to which they will be exposed, (5) that water, soap, and towels be made available to agricultural employees to enable them to wash off pesticides and pesticide residues routinely and after emergency exposures, (6) that emergency assistance be made available to agricultural employees if a pesticide-related illness or injury occurs or is suspected, (7) that agricultural employees, other than pesticide handlers, be prohibited in areas being treated with pesticides, and (8) that agricultural employees be notified of areas that are being treated or that remain under an REI through oral warnings or through warning signs posted at the treated area, or, in the case of some particularly hazardous pesticides, through both oral and posted warnings.

EPA, drawing on its expertise in regulating pesticides, has determined that these simple measures are likely to reduce substantially the number of pesticide-related illnesses and injuries to agricultural employees. Both the frequency of illness and injury incidents under existing conditions and the expected reduction in the number and severity of these incidents due to promulgation of this rule are difficult to quantify. However, the Agency believes that the reductions will be significant. In its Regulatory Impact Analysis (RIA), EPA has calculated an incremental first year compliance cost of \$94.3 million for this rule and an annual incremental compliance cost of \$49.4 million in subsequent years. The continuing annual incremental cost of this rule represents only one tenth of one percent



of the total 1987 value of production for all agricultural sectors subject to this final rule. Assuming that the majority of the current acute illness and injury incidents in agricultural employees caused by occupational exposures to pesticides are prevented through compliance with this new rule, there will be significant benefits to agricultural workers and pesticide handlers at a modest cost. Furthermore, the Agency is convinced that a substantial number of additional incidents caused by delayed-onset illnesses can be prevented through compliance with this new rule. Such expected avoidance of delayed-onset illnesses in workers and handlers would also reduce the costs attributable to acute incidents avoided.

The Agency believes that, due to this new agricultural worker protection rule, the benefits in decreasing the number and severity of pesticide-related illnesses and injuries to agricultural employees exceed the costs of the rule to agricultural employers, pesticide handler employers, and registrants. Therefore, EPA hereby promulgates this rule in the conviction that this mechanism is the best means of reducing the unreasonable adverse effects from pesticide-related illnesses and injuries to agricultural employees in the near term.

Some persons who commented on the proposed worker protection rule questioned the necessity for the rule in specific sectors of agriculture and requested exemptions for those sectors. However, EPA believes that the record of illness and injury incidents resulting from occupational exposures of agricultural employees to pesticides used in the production of agricultural plants and the undisputed inherent acute and delayed-onset toxicity of those agricultural pesticides supports the Agency's conclusion that such agricultural employees are subject to unreasonable adverse effects from pesticide use across the broad range of agricultural sectors covered by this final rule. Furthermore, no persuasive evidence has been brought to the Agency's attention which demonstrates that any individual sector of agriculture is not subject to unreasonable risks of employee illness and injury. EPA is not persuaded to delay promulgation of this rule until data and analyses specific to each agricultural sector and to each pesticide are generated.

Under FIFRA, EPA is authorized to promulgate regulations to mitigate unreasonable adverse effects that may result from exposures to pesticides. The Occupational Safety and Health Act (OSH Act) is similar in that the

Occupational Safety and Health Administration (OSHA) is granted authority to promulgate regulations to mitigate "a significant risk." A recent court decision that upheld the issuance of OSHA's hazard communication rule (29 CFR 1910.1200) was based solely on a finding of generalized risk; the United States Court of Appeals for the Third Circuit stated:

This rulemaking proceeding produced a performance-oriented information disclosure standard covering thousands of chemical substances used in numerous industries. For such a standard the significant risk requirement must of necessity be satisfied by a general finding concerning all potentially covered industries. A requirement that the Secretary assess risk to workers and need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it . . . to protect all employees to the maximum extent feasible . . . [Associated Builders and Contractors, Inc. v. Brock, 862 F.2d 63 at 68 (3d Cir. 1988)].

For the same reasons, EPA is convinced that it is not required to make a detailed risk finding with regard to every pesticide product or to every sector of agriculture before taking action to protect all agricultural employees.

#### D. Minor Crop Statement

According to the Council for Agricultural Science and Technology's June 1982 report, *PESTICIDES, Minor Uses/Major Issues*:

Vegetables, fruits, nuts, herbs, ornamentals, trees, and turfgrass are often referred to as minor crops because the acreage and volume of production of any one of the many crops in these groups are much below that of corn, soybean, wheat, or any of the other major field crops. Minor crops, as well as major crops, must be protected from insects, weeds, and diseases so as to be economically produced. Specialized pest control needs also exist for major crops in certain situations. Pesticides developed for use on minor crops and to meet the specialized needs for major crops are referred to as minor use pesticides.

The minor use crops are the ones this Worker Protection Standard will impact the most. Much of agricultural labor is used on minor crops, and it is in the production of these crops where the greatest chance of pesticide exposure to agricultural workers occurs.

#### E. Compliance Dates

To ensure that pesticide product labeling bearing requirements of the new standard does not find its way to users before information on compliance can be disseminated, the new labeling may not be used until April 21, 1993. At that time, specified selected provisions of the regulation will become

enforceable to support new instructions to users on the labeling. After April 21, 1994, all agricultural pesticide products sold or distributed by registrants must bear the new labeling. After April 15, 1994, all provisions of the regulations are enforceable when pesticides with the revised labeling are used. After October 23, 1995, all agricultural pesticide products sold or distributed by anyone must bear the new labeling.

### III. Provisions of the Final Rule

#### A. Restrictions Associated With Applications

Present part 170 prohibits the application of any pesticide in a way that directly or through drift will contact workers or other persons who are not involved in the pesticide application. It also requires unprotected persons to vacate the area. The Agency proposed to continue this provision with some changes.

1. *General restriction.* The NPRM proposed changes to the existing general prohibition: "No owner or lessee shall permit the application of a pesticide in such a manner as to directly or through drift expose workers or other persons except those knowingly involved in the application. The area must be vacated by unprotected persons." The Agency proposed to substitute the word "contact" for the less precise term "expose" and to clarify the requirement that unprotected workers must vacate the treated area during application by modifying the language to: "No worker shall be allowed or directed to enter or remain in an area during the application of any pesticide to the area, unless the worker is a handler involved in the application of the pesticide." Since these regulations apply only to workers, all references to "other persons" were deleted in the proposal.

There were few comments on these application restrictions. One comment stated that workers should be permitted to remain in the treated area during application under some conditions. For example, planting crews may need to be in a field with the planter during an application of a granular pesticide; field crews may need to be in the same field but may be distant from the area under treatment; and workers should be able to remain in a treated area if they are upwind from the treatment or if an "adequate barrier" or buffer zone separates them from the application. Some comments expressed concern for protecting the public from agricultural pesticide uses such as in retail greenhouses, at "you-pick" farms, in



parks and recreational areas, along roads and rights-of-way, and in schools.

In the final rule, the language from the NPRM has been modified. Section 170.110 states that "during the application of any pesticide . . . the agricultural employer shall not allow or direct any person . . . to enter or to remain in the treated area." The exception found in the proposal for a "worker [who] is a handler involved in the application" has been changed to an exception for "an appropriately trained and equipped handler." These changes were made to make it clear that only handlers trained and equipped as required by this rule can be in an area during application. Other workers, even if protected, are not permitted to be in the area.

The Agency has been persuaded by the comments to reinsert the clause "and other persons" into the section prohibiting application in a way that will contact workers (§ 170.210). Pesticide applicators must refrain from applying pesticides in areas where any person is likely to be touched by the chemical—either directly or from the drift or fallout of the application. This responsibility is irrespective of the relationship of the handler to the person in or near the treated area. This provision is intended to protect workers or other persons on agricultural establishments in or near the treated area even if those persons have no reason or privilege to be in that location. The prohibition is consistent with present part 170, which declares that applying pesticides directly on anyone, whether a worker or any other person, is a misuse and is subject to penalty.

2. *Application restrictions in nurseries and greenhouses.* EPA proposed more stringent application restrictions for nurseries and greenhouses than the general application restriction in present part 170 or those proposed for farms and forests. In greenhouses and nurseries, production areas are often close together. Plants requiring differing pesticide treatments and hand labor schedules may occupy the same bench or bed. In the NPRM, the application restrictions were discussed under the heading of reentry restrictions, but several comments requested clarification of the proposed language. Therefore, in the final rule, EPA is separating the requirements into two parts, restrictions associated with applications and post-application entry restrictions.

In greenhouses, employees often do diverse tasks, including the application of pesticides, close to other activities. EPA recognized that exposure could occur to workers in areas adjacent to

the treated area during some pesticide applications and with some pesticide formulations.

The Agency proposed specific requirements for four different types of applications in greenhouses:

a. The entire enclosed area of the greenhouse must be vacated during the application of a pesticide applied as a fumigant, smoke, mist, aerosol, or fog, or whose label requires a respiratory protection device for applicators.

b. The pesticide-treated area plus 25 feet in all directions must be vacated for any application other than those in paragraph (a) above if there is no ventilation in the enclosed area during the application and the pesticide is applied from a height of more than 12 inches from the planting medium, or is applied using fine spray droplets or a spray pressure greater than 40 psi.

c. The entire enclosed treated area in the greenhouse must be vacated during application if ventilation occurs in the enclosed treated area during the types of application described in paragraph (b) above.

d. Only the pesticide-treated area must be vacated during application of pesticides applied from a height of 12 inches or less and applied as a dry formulation, or applied using coarse spray droplets and spray pressure less than 40 psi.

Nursery exposure situations are similar to those in greenhouses, except that nurseries: (1) Have lower inhalation hazards, because they are not enclosed structures, (2) do not have ventilation systems that can be turned on and off at will, but are constrained by the direction and speed of the wind, and (3) sometimes use aerial applications, upward-directed, and very high pressure (greater than 150 psi) sprays. The areas with restricted worker entry during applications in nurseries were defined by the types of applications:

i. For soil-directed applications, the restricted area is the treated area,

ii. For downward-directed applications, the restricted area is the treated area plus 25 feet downwind and 10 feet in other directions.

iii. For applications by aerial, upward-directed, or high-pressure sprays, the restricted area is the treated area plus any moistened or dusted area.

Most comments concurred with the proposed definitions of areas restricted during applications for greenhouses and nurseries. One comment stated that the 25-foot "barrier" zone was too small to be protective. Another requested that the 25-foot area restricted during applications not apply to pesticides in toxicity categories III and IV. One comment requested that "soil-directed"

be redefined as pressure up to 60 psi if water breakers are used.

A few comments requested clarification of whether the specified 25-foot area restricted during application extended to areas beyond the greenhouse or, in nurseries, extended off the property.

The Agency agrees with the recommendations that greenhouse and nursery restrictions be clarified. The restrictions in greenhouses have been summarized in a table containing the restrictions during applications and the entry restrictions after application (§ 170.110(c)). A similar table has been prepared for applications in nurseries (§ 170.110(b)).

To provide a more useful description of the area restricted during application for employees in nurseries, the Agency specifies that an area of 100 feet in each direction around the treated area must be vacated during applications using aerial, upward-directed, or high-pressure sprays instead of "the area dusted or misted"; EPA modified the area restricted during application to 100 feet beyond the treated area in nurseries during fumigant, smoke, mist, fog, and aerosol applications.

The prohibition against applying pesticides in a way that will allow contact with workers or other persons is absolute. If an applicator has reason to believe that workers (or other persons) may be contacted by a pesticide during a pesticide application in a greenhouse or nursery, even if those workers (or other persons) are in compliance with the minimum distance requirements, the application may not take place until those workers (or other persons) leave the area.

The Agency is not persuaded to exempt pesticides in toxicity categories III and IV from these provisions. The intent is to reduce occupational exposure to pesticides, regardless of their acute toxicity. The Agency is concerned also about possible subacute, chronic, and reproductive or developmental effects from pesticide exposure.

The Agency concurs that, except for fumigation when the entire greenhouse and any adjacent structures that cannot be sealed off from the treated area must be vacated, subenclosures in the greenhouse are permissible and these subenclosures constitute the area that must be vacated during application. If the treated area is enclosed, the 100- or 25-foot zones are not required. The Agency's interpretation is that the 25-foot or 100-foot areas restricted during application do not extend beyond the greenhouse, or beyond the property line



of the nursery. However, the prohibition against contacting workers or other persons does extend beyond such boundaries.

A few comments requested clarification of "downwind" in a nursery where wind currents tend to be multidirectional over time. The Agency concurs with this observation and has determined that requiring a 25-foot area beyond the treated area in all directions will be more protective for workers.

### 3. Restrictions with fumigants.

Although some comments suggested that the entry restrictions for fumigants were adequate, some stated that the restricted-entry area for a fumigant should be defined as the "entire enclosed structure" rather than the "enclosed area" to differentiate between an area enclosed by a temporary barrier and the greenhouse itself.

Some comments requested that "fumigant" be defined to distinguish it from a mist or an aerosol. One comment recommended prohibiting any early entry into a greenhouse following fumigation except to determine fumigant concentration or to facilitate ventilation. A comment requested that the ventilation criteria for defining dispersed vapors specify the minimum number of required air exchanges needed. Other comments stated that the proposed ventilation criteria may not be adequate for large production areas if only small windows or fans are used and recommended that replicated tests be conducted using available ventilation to determine the time necessary to achieve the permissible exposure level for a specific site.

In the final rule, the Agency defines a fumigant as "any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose method of pesticidal action is through the gaseous state." Final part 156 requires pesticide registrants to identify fumigants on the front panel of the label.

The Agency has determined that a fumigant application is complete only when (1) any exposure level listed on the product labeling is reached, or (2) if there is no labeling specified exposure level, when one of the ventilation criteria has been met. The fumigant continues to disperse throughout the treated area after its release. Persons are exposed to the fumigant when they enter fumigated areas to measure ambient concentrations of fumigant or to facilitate ventilation by manipulating ventilation systems in greenhouses or by removing tarpaulins or other coverings from outdoor fumigation sites. These persons, therefore, are handlers of the fumigants. The Agency has changed the definition of handlers to include such

persons and has extended the application prohibition for fumigants in greenhouses to include the time needed to reach the exposure level listed in the labeling or to meet one of the ventilation criteria. During this time, only handlers who have the protections mandated on the labeling and who meet the other requirements in part 170 may enter the treated area. These handlers may enter the treated area only to measure the fumigant level, remove coverings, or operate the ventilation system.

The gaseous nature of fumigants requires that the entire structure, including any adjacent structure that cannot be sealed off from the treated area, be vacated during application. Temporary barriers such as curtains or shields are not designed to be air-tight and therefore would not prevent exposure to persons in areas adjacent to those barriers. EPA has reworded the application restrictions for fumigant applications in greenhouses to specify that the entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area, not just the "entire enclosed area," is the treated area and therefore is restricted.

The Agency concurs that a specific number of complete air exchanges should be specified as constituting sufficient ventilation following a fumigant application (or other airborne application) in a greenhouse. The Agency has concluded that 10 is the minimum number of air exchanges needed. (If each air exchange removed only 50 percent of the pesticide, 10 exchanges should leave approximately 1/1,024 of the original volume of pesticide.) In proposing the ventilation criteria for "vapors dispersed," EPA used the limited data available and consulted with authorities in greenhouse pesticide application processes to establish appropriate and reasonably conservative criteria for protecting workers from inhalation exposure following fumigation in greenhouses.

Several comments noted that many greenhouses are acres large and that workers should be allowed to work in one end of the greenhouse while a spraying application is conducted in the other end of the greenhouse as long as any mechanical ventilation draws the drift away from the workers.

The restriction on ventilation was intended to protect workers from airborne vapors, spray, and dusts. Without ventilation, the transport of the pesticide off-site would be minimal and presumably would move in all directions equally. With ventilation (passive or active), air movement in any direction is possible. The amount of drift is dependent on such factors as the size

and weight of droplets or particles, the pressure of spray, the distance from application equipment to treated surface, and the force and direction of the ventilation. Even "passive" ventilation involves factors such as size of vents, the location of vents, and the outdoor wind currents. The Agency is not persuaded that it is possible to predict the direction or distance that sprays or dusts might drift for all ventilation systems used by the greenhouse industry; therefore, it will continue to prohibit workers from remaining in an area surrounding the application. The dimensions of the area depend upon the type of formulation and the type of application. EPA agrees that after application is completed, the sprays and dusts will settle out of the air and no longer pose an exposure hazard to adjacent workers. Workers may enter the greenhouse after application to work anywhere except in the treated area as defined by Table 2 in § 170.110(c)(4).

In the NPRM, EPA listed criteria for determining when vapors have dispersed after the application of a fumigant. Some comments requested clarification and guidance on when vapors are considered dispersed following application of nonfumigant pesticides that require the use of a respirator during application or that are applied as smoke, mist, fog, or aerosol.

The Agency has modified the application restrictions for pesticides that are applied as fumigants, smokes, mists, aerosols, or fogs, and for applications that require the use of a respiratory protection device, to include ventilation criteria that must be met before workers are allowed to return to work anywhere in the enclosed area, or, in the case of fumigant applications, anywhere in the entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area.

### B. Entry Restrictions

The Agency long has recognized the value of limiting agricultural workers' exposure to pesticides through the use of REIs. Present part 170 established that no worker without the prescribed protective clothing should be allowed to enter a treated area to perform a hand labor task until the expiration of an REI. In the NPRM, EPA did not change this basic requirement, but did extend the scope of this proscription to include any farm, forest, nursery, or greenhouse workers who contact pesticide residues on treated surfaces or in soil, water, or air, not just those who are performing hand labor tasks. The NPRM required that other protections, such as PPE,



training, and decontamination facilities, be provided to early-entry workers.

1. *Restricted-entry intervals.* Present part 170 established a generic "minimum" REI for pesticides used on agricultural sites covered by that part, and it set specific REIs of either 24 or 48 hours for 12 pesticides. Other REIs have been established during the registration, reregistration, and special review processes. Some of these intervals are "permanent" (based on adequate entry data as required by 40 CFR part 158 or a waiver of data submission); others are interim intervals (not based on part 158 entry data) pending the generation of adequate data.

Under existing Agency policy, the establishment of REIs has been limited to pesticides used on agricultural crops where workers perform "hand labor operations," involving "substantial contact with treated surfaces." Workers may have contact with treated surfaces from activities such as moving irrigation pipes and scouting, tasks usually not considered as "hand labor" tasks. The shift from routine preventive pesticide applications to the increasing use of pest control on an as-needed basis has resulted in the need for more frequent post-application entry by crop advisors, such as integrated pest management (IPM) scouts, professional pest management consultants, and growers, to determine the status of insect, mite, disease, and weed pests at each stage of crop development. The amount of contact with treated surfaces in these activities depends on variables such as the height and density of the crop, the nature of the activity, the surface that contains the pesticide residue, and whether residues are dry or wet.

Adverse effects on workers may result from a combination of the toxicity of the pesticide and the amount of exposure. Even small amounts of highly toxic pesticides can cause poisoning.

For these reasons, the Agency decided that any activity that results in contact with anything that has been treated with the pesticide to which the REI applies may be harmful to workers. Thus, the Agency proposed that REIs apply to all pesticide products used on agricultural plants as defined by this part, regardless of type of worker activities associated with particular agricultural plants.

In proposing to revise part 170, the Agency did not contemplate a change to the part 158 process for establishing permanent REIs. Rather, the proposed revision to part 170 represents a change in current Agency policy of setting interim REIs which apply until permanent REIs are established on the basis of part 158 entry data.

Therefore, part 156 retains all permanent REIs set by EPA on the basis of adequate data. It also retains all previously established interim intervals that are longer than those that would be established pursuant to this rulemaking in part 156. These longer REIs have been based, in general, on either delayed (chronic) effects or other exposure hazards such as persistence, post-application chemical transformations, or potential for severe skin sensitization.

2. *Length of restricted-entry intervals.* In the NPRM, the Agency proposed to retain the existing minimum REI of "until sprays have dried, and dusts have settled" for most pesticide applications and to modify it by adding the phrase "or vapors have dispersed" to protect workers immediately after applications of fumigants, mists, fogs, aerosols, or smokes. It also proposed specific REIs of 48 hours for pesticides that contain organophosphates or *N*-methyl carbamates in toxicity category I, and 24 hours for pesticides that contain organophosphates or *N*-methyl carbamates in toxicity category II and for other active ingredients in toxicity category I. The Agency considered other options that reflect varying acute toxicities.

The comments on this issue focused on the length of the proposed intervals and the bases for selecting the REIs.

a. *Minimum restricted-entry intervals.* Several comments endorsed the concept of "sprays dried, dusts settled, vapors dispersed" as a minimum REI. Some comments requested the Agency to establish a minimum REI of 24 hours for all pesticides; others explicitly opposed a 24-hour minimum REI for all pesticides. Another comment suggested that there be no restricted-entry period less than 12 hours.

One comment stated that enforcement of "sprays have dried, dusts have settled, or vapors have dispersed" would be difficult. Others stated that determining when "sprays have dried, dusts have settled, or vapors have dispersed" is not feasible in some greenhouses because in propagation and greening situations it is difficult to ascertain if sprays have dried because foliage is kept constantly wet.

The Agency agrees that in some circumstances it is difficult to determine when the sprays have dried, the dusts have settled, or the vapors have dispersed; judgment is required to assess when such an REI has expired. The rates at which sprays dry, dusts settle, or vapors disperse depend on factors such as temperature, humidity, rainfall, irrigation, dew deposition, wind, crop density, height, leaf configuration, amount of sunshine, and

type of pesticide formulation used. Parts of a treated area may be dry while others are not dry. In dense crops, such as mature corn, the foliage in the center of the stand may be wet while the foliage in the outer areas, where a supervisor is most likely to check, may be dry. Rewetting of foliage because of rain, irrigation, or dew may cause confusion and uncertainty about whether the sprays have dried. Wind may make it difficult to determine whether dusts have settled.

Many comments requested the Agency to establish minimum REIs to protect against possible unknown chronic or delayed health effects. These comments expressed concern that because product-specific health-effect evaluations take the Agency a long time to conduct, agricultural workers continue to be exposed to chemicals whose potential for causing birth defects, cancer, genetic mutations, and other systemic damage has not been tested. They recommended that the Agency consider the potential chronic and other delayed health effects and establish longer REIs.

The Agency has decided to establish a minimum REI of 12 hours for all pesticide applications to replace the "sprays have dried, dusts have settled, vapors have dispersed" requirement. This will provide a margin of safety against occupational exposure to all pesticides and eliminate the need for pesticide users to judge how long workers should be kept out of an area. The disruption to agriculture, and thus the cost, should be minimal; pesticides could be applied in the evening, and worker entry would be allowed the following morning. This REI of 12 hours could be modified through the reregistration (or registration) process on a case-by-case basis most often involving submission of full entry data (part 158).

The Agency will continue to establish REIs on a case-by-case basis for products where nonacute health effects are a concern.

b. *Specific restricted-entry intervals.* Although most comments supported the REIs proposed and many stated that in most circumstances agriculture would be able to comply, one comment stated that REIs longer than the minimum should be reserved for compounds whose toxicity characteristics or exposure history indicated a need for longer intervals.

Some comments supported a 48-hour REI for all active ingredients in toxicity category I and a 24-hour REI for all those in toxicity category II. Other comments requested that REIs not



exceed days-to-harvest intervals or noted that 48 hours is the maximum feasible REI under current crop production methods. Many comments supported 72-, 48-, and 24-hour REIs for pesticides in toxicity categories I, II, and III, respectively. Others specifically opposed a 72/48/24-hour scheme or stated that the REIs proposed should be determined on a case-by-case basis when data indicate a need.

The Agency's proposal was based on California data showing that, from 1976 to 1985, 90 percent of the systemic poisonings caused by active ingredients in toxicity category I and 70 percent caused by active ingredients in toxicity category II involved either organophosphates or *N*-methyl carbamates. These data suggest a relationship between the classes of chemicals used and poisonings. However, a few comments stated that the apparent relationship between chemical class and poisoning in the data is not unexpected; because of the types of crops grown in California, it is likely that 90 percent of the products in toxicity category I and 70 percent of the products in toxicity category II applied were anticholinesterase compounds.

Many respondents objected to the distinction made between organophosphate and *N*-methyl carbamate pesticides and other pesticides in the same toxicity category, stating that the subdivision of toxicity categories I and II by chemical family is not defensible scientifically. These comments asserted that it would be more appropriate to use acute toxicity data as the basis for generic REIs, and to include all compounds in a toxicity category. In contrast, some comments requested that only organophosphate and *N*-methyl carbamate pesticides have REIs.

After reevaluating this issue, the Agency agrees that chemical class should not be a criterion for establishing REIs. The Agency expects that chemicals in the same toxicity category will pose similar risks of adverse effects from acute toxicity; thus, no distinction should be made among the chemical classes within a toxicity category. The Agency has changed the specific REIs. In the final rule, all pesticides in toxicity category II have REIs of 24 hours, and all pesticides in toxicity category I have REIs of 48 hours. All other pesticides (those in toxicity categories III and IV) are subject to the 12-hour minimum REI.

Studies have shown that some organophosphates transform into more toxic products in arid conditions. The Agency has been persuaded that, in areas receiving rainfall of less than 25 inches per annum, organophosphates

that are in toxicity category I and that are used outdoors should have an REI of 72 hours. Acceptable sources of statistics on average annual rainfall for an area are nearby weather bureaus, such as one located at a local airport or one affiliated with the National Oceanographic and Atmospheric Administration (NOAA).

The Agency proposed that REIs be based on the acute toxicity of the technical grade of the active ingredient. Some comments requested that inert ingredients be considered in setting REIs.

The Agency believes that the inert ingredients in pesticide products generally are not of a nature, or do not remain in treated areas long enough, to present hazards for reentering workers. Accordingly, REIs will be based on the possible hazards of residues of active ingredients. The Agency is reexamining the hazards of inert ingredients through a separate process.

The Agency proposed setting intervals based on the highest toxicity category indicated by available data on acute dermal toxicity or skin and eye irritation potential, determined by the criteria of 40 CFR 156.10(h)(1) of this chapter. If no dermal toxicity data are available, oral toxicity data would be used to set REIs.

Workers may have dermal, oral, and respiratory exposure to pesticides; for workers entering treated fields, the predominant route of exposure is dermal. The Agency considered using only dermal toxicity to establish REIs, but the potential for eye and skin irritation and for respiratory exposure may be significantly large in some entry situations. Cases of eye or skin irritation are four times as common as those of systemic poisonings among reentering workers.

Inhalation exposure is a hazard in enclosed areas, such as greenhouses, especially after applications of fumigants or pesticides with high vapor pressure; it is less important as a hazard for entry into treated areas outdoors, except during removal of barriers, such as tarpaulins, after application of a fumigant. Oral toxicity data are the most widely available data on pesticides, but oral exposure in agriculture is related to the worker's personal habits, such as not washing hands and face before eating, drinking, or smoking.

The Agency has determined that entering areas while inhalation exposure remains a hazard is not safe or practical for persons other than appropriately trained and equipped pesticide handlers. Therefore, EPA has modified the entry restrictions in greenhouses to permit only handlers to enter greenhouses until air

concentration levels or ventilation criteria have been met following applications of airborne pesticides or pesticides that require a respirator during application. The Agency also has modified the definition of "handler" to include persons who must enter areas treated with soil fumigants to adjust or remove soil coverings, such as tarpaulins.

A few comments recommended that use patterns and mode of action be considered in setting REIs. Another recommended that the persistence of the residues should be considered in setting REIs since some injuries, such as eye injuries or birth defects, are unrelated to the acute toxicity of the chemical.

Basing REIs on particular use patterns, on the mode of action, or on a particular use's potential for exposure is not feasible because of variations in potential exposure related to crop, cultural practices, and application techniques. These considerations are appropriate for establishing permanent REIs on a case-by-case basis such as through the reregistration process.

*c. Establishing entry restrictions in the future.* The REIs established through this final rule are intended to remain in effect until the reregistration process or other comprehensive EPA review process makes definitive REI determinations. In most circumstances, the Agency expects that any REI established as the result of the later Agency review would prohibit early entry to perform routine hand labor tasks. However, such REIs would be based on a risk-benefit judgment that takes into account the prohibition against routine early entry to perform hand labor tasks.

The Agency expects to establish appropriate entry restrictions on the basis of several types of data. These may include, as applicable, data on how the residue degradation rate and dislodgeability (amount readily transferable from a surface to persons contacting that surface) are influenced by pesticide formulation type; temperature; humidity; soil type; rainfall, dew, and irrigation practices; sunlight; crop type, height, and density; specific production practices, or worker activity and length of exposure. When feasible, the Agency may establish product-specific REIs that vary depending on one or more of these parameters. For example, the Agency may establish longer REIs for timed-release formulations, which are designed to release the active ingredient over an extended time period. The Agency may determine that, for some tasks, shorter REIs are warranted for "low crops" than



for tree crops and other "high crops," such as corn, because workers' exposure levels would be expected to be lower. The Agency may also determine that in areas with characteristically hot, arid conditions and certain soil types, longer REIs are warranted for certain active ingredients because of slower degradation, higher transferability, and transformation of the active into more toxic forms. The Agency may also impose longer REIs for some active ingredients in areas with heavy dew or frequent light rain because those actives are either activated by moisture or transformed by moisture into more toxic forms. On the other hand, if adequate data exist, the Agency may decide that it is feasible to allow a reduction in REIs when a specified amount of rain has fallen or over-the-top irrigation has been applied to the treated area.

Another type of product-specific restricted-entry determination might include situations where data indicate that worker contact with the treated surfaces could be acceptably reduced through the use of minimal PPE or mechanical devices that physically separate the worker from the treated surfaces. Such determinations might, for example, allow early entry following soil-directed applications if the worker is wearing chemical-resistant footwear and is performing tasks that do not involve skin contact with the soil surface. Another possible restricted entry adjustment would be to prohibit all routine hand labor tasks for a specified time period, such as 1 or 2 days, and then to allow certain hand labor tasks during the remaining restricted-entry period if certain (perhaps minimal) PPE is worn and other precautions are taken. Still another possible restricted-entry adjustment might allow early entry (with or without minimal PPE) if devices, such as mechanical detasslers or rogues, are used that minimize worker exposure to treated surfaces. The final rule does contain an exception that allows early entry for activities that involve no contact with anything that has been treated with the pesticide to which the REI applies, including, but not limited to, soil, water, air, or surfaces of plants in the treated area.

Unfortunately, it is unlikely that such product-specific decisions will be routine, because of their complexity. Conveying such exceptions and restrictions to users in a simple, intelligible manner is difficult. The necessary labeling would be unduly complex. The Agency projects that such adjustments will be most likely in those situations where data indicate that a

relatively lengthy REI is necessary under average conditions to adequately reduce risk, but where such a lengthy REI may make the pesticide's use infeasible for certain crops for which hand labor is necessary within tight timeframes after application. Under these circumstances, the Agency will consider alternatives to the prohibition of routine hand labor tasks throughout the REI. In any such deliberations, however, EPA will also consider whether workers can be adequately protected under a more complex set of entry requirements.

For the longer run, because of the many factors that affect worker exposure to pesticide residues, the Agency is exploring alternative methods of establishing REIs and alternatives to REIs. One possible approach involves on-site determination as to whether residues have degraded (or are otherwise unavailable) to a degree deemed acceptable for workers to safely enter to perform hand labor tasks involving contact with treated surfaces. One promising technique involves immunoassay-based detection. Immunoassay techniques could provide rapid, simple, and cost-effective methods for determining actual foliar or soil residue levels under field conditions. It is expected that inexpensive kits can be developed that will yield results in a short period of time, thus enabling site-specific determination as to whether residues have decreased to an Agency-established acceptable level for worker entry. This technology would also provide an effective means of signaling to the agricultural employer when residues remain sufficiently high so as to make worker entry unreasonably risky, even if the REI had expired.

EPA has determined that more research is required to develop immunoassay and other site-specific monitoring systems for field residues. However, the research data to date indicate that an immunoassay-based system probably could be developed. Immunoassay devices use antibodies as receptors to sample the environment of the exposed surface (persons, foliage, soil, etc.). Specific antibodies to many pesticides of concern already have been developed and evaluated, but specific antibodies for other priority compounds need to be identified.

The Agency strongly encourages the rapid development of practical and reliable techniques of this kind and welcomes further information on ongoing research and the opportunity to cooperate with developers on the necessary research. To support the goal

of improving such technology, the Agency also intends to consider requiring the development of such detection methods for the registration or continued registration of selected pesticides. Furthermore, as product-specific reentry data are generated and analyzed, EPA will investigate the feasibility of adding information on the pesticide labeling that indicates the acceptable residue levels on the specific surfaces of concern for that product. Such information might encourage more rapid development and marketing of site-specific test kits.

3. *Entry before a restricted-entry interval expires*—a. *Entry for other than hand labor tasks.* Present part 170 allows workers to enter a treated area without PPE before the expiration of the REI if they are not performing hand labor tasks. The Agency proposed to modify this requirement by allowing entry into pesticide-treated areas before the expiration of the REI without protective measures only when there is no contact with pesticide residues on treated surfaces or in soil, water, or air. Pesticides would be considered to be in the air, for example, in a greenhouse or other enclosed area before the exposure level listed on the labeling has been reached or one of the ventilation criteria established by § 170.110(c)(3) or in the labeling has been met. Examples of "no contact" activities listed in the proposal included:

i. Operating a closed vehicle equipped with a properly functioning positive-pressure filtration system.

ii. Performing tasks that do not involve contact with the soil subsurface after a soil-incorporated or soil-injected pesticide application.

iii. Performing tasks that do not involve hand contact with the soil, planting media, or plants after a soil-directed or basal-directed application while wearing chemical-resistant footwear.

iv. Operating an open vehicle when the crop is not tall enough to brush against the worker or when pesticide residues could not drop from trees and other plants onto the worker.

v. Walking or riding through a pesticide-treated area on an aisle, a road, or a path, if the pesticide is applied or is directed in a way that would not cause residues to drop on the worker and if the worker cannot brush against treated plants or trees.

Many comments opposed any early-entry activities. It is not clear whether some were against early entry in situations where there would be no contact with pesticide residues.



The Agency recognizes the need to allow workers access to adjacent benches or adjacent plants in greenhouses and nurseries to carry out other plant production tasks. In the proposed regulation, the Agency intended to allow workers to pass through treated areas (walk around benches, down aisles, etc.) after the sprays and dusts had settled from the air, if no contact with the treated surface would result. The Agency considered that walking down an aisle would result in "no contact" after sprays and dusts have settled if the worker was wearing shoes with chemical-resistant soles, even if the spray or dust has been applied over a large area and the aisle has received some deposit. Although the "sprays and dusts have settled" provision has been deleted, the Agency believes that walking through a pesticide-treated area on an aisle or path would constitute "no contact" as long as residues cannot drop on the worker or the worker does not brush against treated surfaces.

The Agency does not intend that workers wearing PPE would be considered to have "no contact." Therefore, the example listed in the NPRM: "Performing tasks that do not involve hand contact with the soil, planting media, or plants after a soil-directed or basal-directed application while wearing chemical-resistant footwear" is not applicable to the final rule. The following are examples of situations that may be considered no contact after sprays, dusts, and vapors have settled out of the air:

(a) The worker is wearing footwear and is walking in aisles or on roads, footpaths, or other pathways through the treated areas where the plants or other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker.

(b) The worker is in an open-cab vehicle in a treated area where the plants or other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker.

(c) After a pesticide is correctly incorporated or injected into the soil, the worker is performing tasks that do not involve touching or disrupting the soil subsurface.

(d) The worker is in an enclosed cab on a truck, tractor, or other vehicle.

The Agency will permit entry to a treated area when the worker will have "no contact" with the treated surfaces.

b. *Entry for short-term tasks.* EPA proposed to allow worker entry into treated areas after sprays have dried or dusts have settled, but before the REI has expired, to perform any activity, if the workers are provided appropriate

PPE, training, and decontamination facilities. The Agency anticipated that agricultural producers seldom would require workers to enter treated areas before the REI has expired because of the increased risk to the workers, the cost of providing PPE, and the problems of heat-related illnesses. It is expected that most agricultural management practices can be carried out after the REI expires; thus, few workers would need these protective measures.

A few comments supported the proposal that early entry be permitted with the use of PPE or stated that routine hand labor should be allowed if the worker is wearing the PPE required by EPA. Many comments opposed early entry even with the use of PPE. One comment noted that a requirement for the use of PPE by field workers is not practical and is not likely to be adhered to in many situations. A comment stated that the REI should be sufficiently long so that at its expiration there are no further concerns or restrictions on either the field activities or the clothing worn into the field.

Information gathered by the Agency during the process that led to the NPRM and comments that the Agency received in response to the NPRM have convinced EPA that entry during an REI to perform routine hand labor tasks is rarely necessary, especially when the REI is 72 hours or less. The Agency noted in the NPRM that:

The Agency anticipates that agricultural producers will seldom require workers to reenter treated areas before the reentry interval has expired, because of the increased risk to the workers; the cost of providing PPE, decontamination water, and training; and the problems related to heat-induced illnesses. Since most agricultural management practices can be carried out after the reentry interval expires, few workers will need these protective measures.

Furthermore, comments received in response to the NPRM questioned the feasibility of workers wearing PPE while performing hand labor tasks under normal agricultural field conditions. The Agency has studied the issue of PPE for agricultural field workers who are performing routine hand labor tasks and has concluded that routine use of PPE, such as chemical-resistant gloves, footwear, and headgear, two layers of clothing, and protective eyewear, for such field workers is, in general, not only impractical, but also may be risk-inducing due to heat stress concerns. The Agency has determined that hired agricultural workers, especially harvesters, have a disincentive to wear PPE; because they frequently are paid at a piece rate, they have little tolerance for anything that hinders their speed

and efficiency. The Agency concludes that it is likely that the PPE would be removed or would be worn incorrectly if it were required routinely in most hand labor situations. Many comments also observed that routine early entry during the REI was rarely necessary.

After consideration of the comments and the available data, the Agency has concluded that, under most circumstances, allowing routine entry for unlimited time to areas under an REI, even with PPE, decontamination, and training, will not reduce adequately the risk of agricultural workers' exposure to pesticides, and that the economic benefits associated with such routine early entry do not justify the risks associated with such early entry. Consequently, the Agency is convinced that routine hand labor tasks should not be allowed before the expiration of the REI, except in rare circumstances based on case-by-case consideration.

In this final rule, the Agency has therefore prohibited most entry during the REI to perform routine hand labor tasks. The Agency will allow necessary short-term activities, such as operating irrigation equipment, in areas remaining under an REI if: (1) There is no entry for the first 4 hours after application and thereafter until any exposure level listed on the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling has been met; (2) no hand labor tasks are performed; (3) the time in treated areas does not exceed 1 hour in any 24-hour period for a worker; (4) the required PPE is provided, cleaned, and maintained for the worker; (5) the required decontamination and change areas are provided; and (6) the required safety training and labeling-specific safety information have been furnished.

As stated in the NPRM, the Agency considers the risk of exposure for early-entry workers to be comparable, in some situations, to the risk for pesticide handlers. Sometimes, early-entry workers may receive greater exposure than that encountered by an applicator of the pesticide. The Agency believes that there should be no entry to freshly treated areas for any reason until the dusts or sprays have settled and some drying or volatilization of the formulation has taken place; thus it has prohibited entry to treated areas for the first 4 hours after application. After 4 hours have elapsed, 1 hour should be sufficient time to do necessary "short-term" tasks, which the Agency is aware must be done, and should minimize worker exposure.

c. *Exceptions to the prohibition on routine early entry.* Although the



Agency has determined, in general, not to allow routine early entry even with the use of PPE, the Agency did receive information during the comment period from the cut flower and cut fern industry about the economic hardships that would result in that particular industry if routine hand labor activities were prohibited during REIs. In that industry, it appears that the risk-benefit balance might militate in favor of allowing some hand labor activity during the REI. While no information was submitted during the comment period demonstrating that other industries might suffer a significant adverse economic effect if routine early entry during REIs were disallowed, it is certainly possible that other industries, crops, or crop practices may be significantly affected by the prohibition of such routine early entry.

The Agency has, therefore, adopted an exception process that would allow interested persons to demonstrate to the Agency that, in a particular industry, crop, or crop practice, an exception should be granted to the general prohibition on routine early entry. Persons wishing to obtain an exception to the early-entry restrictions would submit a request for such an exception to the Agency.

The Agency encourages persons who wish to submit such requests to submit the requests as a group or association of affected parties, rather than as individuals. EPA expects that the most efficient and effective request process would ensue when a group or association of growers and/or workers with common interests present a single, consolidated request for an exception. Such a group request would both permit a more efficient review process and lend weight to the case that the exception was necessary to alleviate typical conditions in the commodity or crop-practice situation for which the exception is being requested and was not a highly-specific localized situation. Requests for exceptions that are limited to a narrow geographic area, such as a single agricultural establishment, must be accompanied by persuasive evidence that such a narrow geographic scope is appropriate.

The Agency also notes that all of the information pertinent to the specific exception must be submitted with the exception request. The rule states what types of crops and crop production practices might qualify for such an exception and what information must be supplied to the Agency in order for an exception to be considered. If a request for an exception is submitted to the Agency without all of the required

information, the Agency shall return the request to the submitter. When a request for an exception that contains all of the required information is submitted to EPA, the Agency will publish a notice in the *Federal Register* stating that an exception is being considered, describing the nature of the exception, and allowing at least 30 days for interested parties to comment. The Agency will also send a copy of such exception requests to USDA at that time. EPA expects to cooperate with USDA in obtaining information necessary for analysis of the exception requests.

If such an exception is approved, the Agency will publish a notice describing the exception and the reasons for it in the *Federal Register*. The final rule also provides a means for the Agency to withdraw exceptions if the Agency receives poisoning information or other data that indicate that the health risks imposed by the early-entry exception are unacceptable or if the Agency receives other information that indicates that the exception is no longer necessary or prudent.

EPA will endeavor to review any requests for exceptions expeditiously. As stated above, requests from registrants or groups/organizations are likely to yield the most efficient review process. Also, the more specific the request, the more readily the Agency can evaluate the full range of impacts. The Agency will consider the economic urgency of the request and the timing of the pest concern, crop, or production practice for which the exception is being requested. To expedite the exception process, EPA intends to establish a formal exception-review procedure that remains outside of the usual registration and reregistration processes. A special organizational unit would be designated as responsible for receiving and processing exception requests, including establishing a mechanism for receiving comments, reviewing all submitted information, and facilitating the decision-making process among the Agency technical experts. EPA believes that this unique strategy will greatly expedite the exception process and allow the Agency to address exceptions in a timely manner. With this process, EPA will endeavor to respond in a timely manner when receiving requests for exceptions that contain all of the required information and will attempt to respond with special urgency to exception requests that are particularly crucial due to unexpected pest problems or crop-season timing.

The final rule provides that persons requesting an exception may assume

that the exception has been denied if EPA has not published its decision whether to grant the exception within 9 months from the comment-closure date specified in the *Federal Register* notice in which the Agency announced that it would consider the exception, unless the Agency has taken action to extend its review period for a specified time interval due to the complexity of the exception request or to the number of exception requests concurrently under Agency review.

While exception requests may be filed immediately, the Agency is also interested in receiving additional comments and information on both the general prohibition of routine early entry for the performance of hand labor tasks during REIs and the mechanism and criteria for granting exceptions to that general prohibition. EPA is therefore providing an additional 60-day period during which written comments, data, and other evidence concerning these specific topics may be submitted to the Agency for consideration. Upon review of these comments, EPA may modify this final rule where appropriate. This additional comment period should allow for possible refinement of this rule without delaying its implementation and without delaying the consideration of exceptions that may prove to be necessary.

Comments that EPA has already received from the cut flower and cut fern industry have convinced EPA that this industry, at least, probably warrants such an exception. The decision that such an exception is probably warranted is based on a balance of the risks and benefits that would result from such an exception (see proposed exception to rule published elsewhere in this issue of the *Federal Register*). The Agency is unaware of any specific information indicating that crops or industries other than the cut flower and cut fern industry would qualify for such an exception, but the exception process adopted in this final rule provides interested persons an opportunity to submit relevant information to the Agency if they believe additional exceptions are warranted.

*d. Entry for agricultural emergencies.* Several comments suggested that early entry be allowed for emergencies on a case-by-case basis. If there are situations in which workers need to enter an area before the expiration of an REI, growers should be able to obtain permission, in advance, from the EPA or the State lead agency.

The Agency recognizes there may be a need for workers to enter a treated area



before the expiration of an REI to perform tasks, including hand labor tasks, in agricultural emergencies. The Agency regards an agricultural emergency as a sudden occurrence or set of circumstances that the employer could not have anticipated and over which the employer has no control, requiring entry into a treated area, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected on the basis of experience and fluctuations of crop yields in previous years. Only losses caused by the emergency conditions specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss. Such emergencies might consist of unexpected and severe adverse weather, such as frost, high winds, tornado, or hurricane, or an unexpected and severe pest outbreak immediately before harvest on a time-sensitive crop such as the soft fruits, soft vegetables, or floral crops. If an emergency is anticipated through a weather forecast, pest outbreak bulletin, or other means, it is not acceptable to proceed with a pesticide application after becoming aware of an impending emergency and then require workers, due to the emergency, to enter the treated area before the REI has expired.

The Agency has modified the early-entry restrictions to permit entry to areas under REIs in agricultural emergencies if a State, Tribal, or Federal agency having jurisdiction declares that the circumstances for an agricultural emergency exist and the employer determines that the agricultural establishment is subject to the emergency. Entry is permitted if: (1) There is no entry for the first 4 hours after application and no entry thereafter until any exposure level listed on the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling has been met, (2) the required PPE is provided, cleaned, and maintained for the worker, (3) the required decontamination and change areas are provided, (4) the required general training and label-specific information has been furnished, and (5) only tasks related to mitigating the emergency are performed.

### C. Notice of Applications

The Agency proposed that workers on an agricultural establishment be notified of pesticide applications and areas remaining under an REI. An exception was proposed for farms, forests, and

nurseries—no notification would be necessary if, from the start of application until the end of the REI, the worker would not enter, work in, remain in, or pass through, on foot or in an open vehicle, the pesticide-treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area. A similar exception proposed for greenhouses stated that no notification would be required if, from the start of application until the end of the REI, the worker would not enter, work in, remain in, or pass through the greenhouse. These exceptions were designed to limit the notification requirement to those occasions where the most potential for accidental worker exposure exists and where notification would prove most useful. Notification would not be required when pesticides are applied at times when no workers are employed by the establishment or when pesticides are applied to (or an REI is in effect at) distant areas of the establishment where no work activities are occurring.

Some comments supported these exceptions; some requested that the exceptions be dropped and that workers be notified of any pesticide-treated area on the property, because crews may enter treated areas by mistake. One comment wanted to have information provided to workers about pesticides used in areas contiguous to the area where they will be working. Another noted that since only a small percentage of farms require hand labor for cultivation or harvesting, it seems impractical to post fields when the only one who would be entering is the farmer who caused the field to be treated.

A few comments requested a definition of the word "neighboring," and some stated that "neighboring areas" should be defined as property controlled and/or owned by the employer.

After careful consideration, the Agency has decided to retain but reword the exception to notification on farms and in nurseries and forests. The term "neighboring area" has been deleted; the final rule requires notification if workers may be within 1/4 mile of the treated area's perimeter. This distance was chosen for several reasons. First, data from studies show that residue drift from a treated area is negligible beyond 1/4 mile. Second, the Agency believes that 1/4 mile is the farthest distance that workers would be likely to digress from their path or work site for rest or meal breaks. Although the Agency believes that a prudent owner/operator of an agricultural

establishment will inform adjacent property owners/operators of pesticide applications at their mutual borders, EPA has determined that such a requirement is beyond the scope of this rule. The exception to notification in greenhouses has not been changed.

The Agency has added an additional notification exception that applies to all agricultural establishments. Notice (oral or treated area posting) need not be given to a worker if the worker (1) applied or supervised the application of the pesticide for which the notice would be given and (2) the worker is already aware of the information that would be otherwise conveyed in an oral warning. This exception exempts establishments from having to orally warn or post warning signs at treated areas for an already-informed applicator of the pesticide. This exception would be especially important if the pesticide applicator is the only worker on the establishment for whom notification would otherwise be required.

1. *Oral notification.* The Agency proposed that workers be given daily oral warnings about pesticide-treated areas on farms and in forests, except as noted above. The warnings would consist of: (1) The location and description of the treated area, (2) the time during which entry is restricted, and (3) instructions not to enter the treated area until the REI has expired. The warnings would be required to be given in a manner the worker can understand.

Several comments supported the requirement for mandatory oral warnings on farms and forests because large numbers of agricultural workers would not be able to read material printed in English.

Some respondents felt that oral warnings should be required only on the first work day for any worker or when there is a change in the spraying schedules because daily warnings may cause workers to ignore the repetitive message. Some comments stated that oral warnings would be unworkable in some agricultural operations because employees may report to work from different locations at different times of the day, e.g., coming from on-farm camps or local housing or being bused from cities or other farms.

Other comments objected to mandatory oral warnings and requested that employers be given a choice of using oral warnings or posting warning signs. One respondent suggested issuing cards containing information about spraying to workers in lieu of oral warnings.



Some comments stated that oral warnings are more effective if they include information such as the name of the product or active ingredient, the location of labeling, and/or safety information for the product and the REI.

Most comments supported a requirement that oral warnings be communicated in a language the worker can understand. However, a few noted that it would be difficult for growers to find persons who could provide translations into all the languages that might be needed.

The Agency has been persuaded that farm and forestry operations should have the choice of notifying workers orally or by posting signs at the treated area. EPA is convinced that for highly diversified farms where different crops would be grown close together or for large agricultural operations where many workers are employed, oral warnings may be impractical and may not be as protective as posting signs at the treated area. However, the Agency believes that most farm and forestry employers will opt to warn employees orally. Signs that employers post must meet the same criteria as the signs for the mandatory treated-area posting.

The Agency also has been persuaded to eliminate the requirement that oral notification be given daily. Instead, employers are required to notify workers before the worker's first opportunity for exposure to any treated area. Regardless of whether the employer uses oral notification or posting, the Agency is requiring that application-specific and restricted-entry-specific information be posted at a central location accessible to all workers. This information will remind workers of areas where pesticides are being applied or where an REI is in effect. EPA is convinced that additional information about the pesticide application can be conveyed more effectively through these centrally located notice areas than through oral notification. Providing information about applications on printed cards is not a practical alternative to oral notification because of language problems and the cost of duplicating the information.

**2. Posting pesticide-treated areas.** Besides oral warnings, the Agency proposed to require the posting of warning signs in areas of farms and forests treated with pesticides having REIs greater than 48 hours, except when no workers would be in the area, as discussed above. The Agency also considered other posting options, such as for pesticides with REIs more than 24 hours.

Some comments supported the proposed posting requirements, but

some stated that posting must be supplemented with oral notification, particularly on large farms and in forests where posting may be difficult.

Many comments advocated daily oral notification supplemented with mandatory posting so that persons working near the area or moving through the area are aware of the application and can avoid contact.

Some comments stated that areas treated with pesticides having REIs exceeding 24 hours should be posted because posting is an unequivocal way of communicating to workers their right and duty not to enter a treated field.

Some comments said that posting for all pesticides with an REI of greater than 24 hours would be more consistent with the purpose of the proposed rule than posting only for intervals greater than 48 hours. The latter, they said, would exempt nearly all pesticide applications from posting. They stated that oral warnings alone are inadequate for warning workers of the hazards of entry from products in toxicity categories I and II and suggested the requirement might be met by posting a map showing treated areas.

Other comments opposed any mandatory field posting requirement. One stated that workers could be notified by a centrally located information board.

The Agency has reviewed the comments on mandatory field posting and has decided to modify these requirements. The Agency has defined at least two objectives for posting of treated areas: (1) Warning of areas treated with pesticides that are so toxic that incidental exposure, i.e., contact from brushing against the treated surfaces, could cause an acute illness or injury and (2) warning of areas treated with pesticides for which a short exposure could have the potential for a delayed effect, such as developmental toxicity. The final rule requires posting for all pesticides that contain active ingredients that are classified as toxicity category I because of acute dermal toxicity or skin irritation potential. On a case-by-case basis, the Agency also may require posting for other pesticides that the Agency deems may produce adverse health effects from a short-term exposure.

The Agency will require that oral notification also be given to workers when posting is required so that a second tier of warning is provided for these pesticides. Pesticides meeting these criteria will have a statement in their labeling that the treated area must be posted and workers must be notified orally.

The Agency proposed that "When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted." This would allow posting of a larger area than the treated area when a continuous spraying operation treats alternative rows or areas, rather than the entire area, on a sequential basis. Since posting of individual rows in this case would be difficult and expensive, the Agency would allow the entire area to be posted. However, no part of this entire area may be entered while signs are posted, except under the conditions specified in the regulation for early entry. The Agency has retained this provision in the final rule.

**3. Warning sign.** The Agency proposed a standard warning sign containing a stern-faced person with an upheld hand containing the words "DANGER - PESTICIDES - KEEP OUT."

Although the sign proposed by the Agency received some support, many comments requested modifications to the symbol or the wording. There were suggestions that the sign should contain the skull and crossbones or should use some international symbol.

After consideration of the comments, EPA remains opposed to the use of the skull and crossbones symbol for the reasons stated in the NPRM and because posting may be required by the Agency not only for the most acutely toxic pesticides but also for some pesticides in other toxicity categories. Acute toxicity is only one factor in determining what areas should be posted; posting will be required by the Agency on a case-by-case basis during registration, reregistration, or special review for pesticides presenting other types of risks. Furthermore, farm, forest, and nursery establishments may choose to post all pesticide applications, and greenhouse establishments must post all pesticide applications.

The Agency did not find an appropriate international symbol that it believed conveyed the desired message.

The Agency has not been persuaded that the basic design of the sign should be changed. The Agency is convinced that mandatory worker training will promote worker recognition and understanding of the sign proposed in the NPRM.

Some comments expressed concern that the words "Pesticides" and/or "Danger" make the sign too negative; others recommended that pesticide signal words such as "DANGER" or "CAUTION" be reserved for use with specific materials that carry relevant toxicity classifications. Some suggested that to use the word "DANGER" or the



skull and crossbones symbol on posting signs would be misleading and weaken the meaning of these signals where materials in toxicity categories III or IV might be involved.

Some comments requested that the signs be in as many languages as necessary to reflect the composition of the work force; others requested that additional information be required on the signs, such as the name of the pesticide, the date and time applied, and where toxicity information may be obtained.

The Agency is persuaded to change the wording of the treated area warning sign. The words "DANGER/PELIGRO," "PESTICIDES/ PESTICIDAS" and "KEEP OUT/NO ENTRE" will be required. The Agency realizes that Spanish/English signs cannot be read by all workers, but it is impractical to require printing in all the languages used by workers.

The Agency believes that removal of the words "Pesticides" and "Danger" from the signs would defeat the purpose of the signs. Changing the wording to reflect the signal word for the pesticide used would require the employer to have several sets of signs, which would be burdensome. The objective of posting is to keep workers out of an area under treatment, not to inform them of the type or degree of hazard.

Because the Agency believes that a generic treated-area sign is the most practical, economical, and reasonable choice, it will not require application-specific information to be listed on the sign. Such information may be added to the sign if the information does not interfere with the other components of the sign. Application-specific information will be required at the centrally located notification area.

The Agency proposed that warning signs be visible from all usual points of worker entry to the pesticide-treated areas, including each access road, each border with any labor camp adjacent to the pesticide-treated area, and each foot path and other walking route that enters the pesticide-treated area. When there were no usual points of worker entry, signs were to be posted in the corners of the pesticide-treated area or in any other location affording maximum visibility.

Several comments requested that posting also be used to protect other persons, such as persons who live in houses or labor camps adjacent to the fields and persons who may be passing by fields. Some comments advocated posting at specified distances along the perimeter of treated areas in addition to the usual points of access; others noted

the difficulty in posting all entries to forested areas.

The Agency believes that "at the usual points of entry" is the most reasonable requirement for placement of the signs. Posting at specified intervals along the perimeter is unnecessary and burdensome. Labor camps within or adjacent to treated areas must be posted when posting is required for the treated area. Posting a warning sign at a central location is an inadequate replacement for the posting of treated areas. Although posting may be difficult for forestry operations, the Agency believes it is feasible to post at locations that may be considered usual points of access, such as at the place where logging roads enter a treated area.

The Agency also recognizes the concerns expressed about warning persons other than workers. While the intent of the rule is to protect agricultural workers, the requirement for posting treated areas will provide warning to other people who might enter the treated area inadvertently. The Agency intends to consider additional actions to deal with exposures not covered by these regulations. These include non-agricultural exposures, agricultural exposures excluded from these regulations, and exposures to the public.

4. *Notice of applications in greenhouses and nurseries.* In greenhouses and nurseries, the Agency proposed mandatory posting of all entry-restricted areas instead of oral notification, unless there are no workers in the area.

Some comments supported the requirement as proposed, stating that the requirement to post pesticide-treated areas seems fair in lieu of oral warnings. Others objected to the requirement because nurseries were singled out for more restrictive posting requirements than forests or farms.

The Agency has considered the various comments and has decided to retain the mandatory posting requirement for pesticide applications in greenhouses, but to change the requirement for nurseries. Although some nurseries are much like greenhouses with many crops grown in small areas, others more closely resemble farms. Therefore, the Agency is persuaded that nursery employers, like farm employers, should be permitted to choose between oral notification and posting pesticide-treated areas except when mandatory posting and oral notification are required by the labeling.

#### D. Personal Protective Equipment (PPE)

The predominant route of pesticide exposure in outdoor agricultural work is through the skin. Therefore, any barrier that can be placed between the employee and the chemical to reduce contact with the skin reduces the risk of pesticide poisoning. EPA concluded, in the proposal, that except for enclosed cockpits and enclosed cabs with positive-pressure filtration systems, the only other practical barrier available to pesticide applicators is PPE. For mixers and loaders, closed systems and technological advances in containers and packaging, such as water-soluble bags, have potential, but work is needed to perfect these approaches. The NPRM stated that PPE was the most practicable approach to reducing occupational exposure to agricultural pesticides.

The proposal required the use of PPE appropriate to the pesticide and the work activity. The proposal also required employers to provide, clean, and maintain such equipment.

Several comments stated that PPE should be the last resort for protection and that engineering controls should be explored first. Some studies of desirable methods of protection have concluded that PPE ranks below removal of employees from areas where they may be exposed, system design, and mechanical protection. Some comments stated that the proposed rule dismisses mechanical techniques of reducing or eliminating exposure as being unavailable or of limited utility and that this is in sharp contrast with other regulatory proposals developed by EPA and other Federal agencies which "force technology" by providing a lead time for nonmechanical solutions and then requiring the application of the "best available technology."

Unlike industrial environments, which are more controlled and confined, agricultural settings do not lend themselves as easily to engineering controls. The Agency is aware of the emergence of engineering controls suitable for agricultural situations and is considering the adoption of such controls on a product-specific basis during the registration, reregistration, and Special Review processes. Until adequate engineering controls are developed and tested, PPE will remain the primary means of mitigating exposure for agricultural pesticide handlers. The elimination of routine early entry for hand labor activities may "force" the development of engineering controls, such as mechanical harvesters,



weeders, and pruners, in crops where the timing of such tasks is critical.

Some comments requested that closed system mixing and loading and enclosed cab application be required for all toxicity category I pesticides to reduce employee injuries.

Some comments agreed with the proposed reduction of PPE requirements during use of closed mixing/loading systems. However, another comment requested that EPA not reduce PPE requirements for closed system mixing/loading. It stated that pesticides are highly corrosive and that the Agency has no program to inspect and certify such systems. The comment asserted that the efficacy of closed systems has been impaired by the failure of the Agency or the manufacturers to establish uniform specifications for container openings.

One comment stated that the regulation should contain incentives to develop low-risk transfer and cleaning options. Requiring the use of chemical-resistant gloves and aprons to transfer granules in a closed system will cause applicators to stay with more dangerous, but cheaper, conventional systems. Similarly, if self-cleaning mechanisms are provided for pesticide equipment, PPE requirements should be reduced.

Several comments requested that engineering controls such as wiper wands, low-pressure nozzles, and stream emitters be rewarded with reduced PPE requirements.

EPA considered requiring closed systems for mixing and loading all highly toxic pesticide concentrates. The Agency has decided to encourage the use of such systems by reducing the amount of PPE required when closed systems or enclosed cabs are used for mixing, loading, applying, or other handling activities, but it will not require the use of such systems. The Agency agrees that for closed systems to be most effective in reducing exposure, the kinds and types of equipment used in such systems and the maintenance of such equipment must be standardized. Such a program is beyond the scope of part 170 as proposed; the Agency is investigating several types of engineering controls and may require the use of such controls in the future. The Agency also agrees that "rewards" such as a reduction of PPE requirements are incentives for handlers to use engineering controls, but eliminating all PPE requirements during the use of closed systems does not seem to be prudent. A number of accidents are reported despite the use of closed systems.

One respondent requested that EPA require state-of-the-art protective

clothing for employees where appropriate; another was concerned that the Agency not establish excessively rigid requirements that would discourage use of improved knowledge or technology.

EPA intends to remain attentive to the development of innovative PPE and to adjust the PPE requirements as appropriate.

1. *Personal protective equipment (PPE) for early-entry workers.* The Agency proposed minimum PPE requirements, based on the acute toxicity of the active ingredient, for the protection of workers who enter treated areas before the expiration of an REI.

Several comments stated that early-entry PPE should be the same as the PPE required for handlers, presumably including respiratory protection. Another stated the Agency should have a better rationale for excluding inhalation toxicity as a hazard for workers entering fields after dusts have settled, sprays have dried, or vapors have dispersed.

The Agency intends to eliminate workers' respiratory exposure during application (which is defined as continuing until the pesticide is no longer being dispersed) by prohibiting workers from being in or near the treated area. The Agency has concluded that respiratory protection is not needed during the permitted entry after application.

Many comments recommended that no early entry be allowed, because workers will not use the PPE if the weather is too hot or will risk heat stress if they do wear the equipment. A few comments objected to PPE other than normal work attire for early-entry workers by expressing the belief that, in most cases, long-sleeved work shirts and long work pants provide adequate protection.

Several comments expressed dismay that no minimum PPE was established for early-entry workers in areas treated with pesticides in toxicity categories III and IV and recommended that early-entry PPE for these pesticides should be normal work attire plus chemical-resistant gloves because many of these chemicals are skin irritants. Others requested that coveralls and chemical-resistant gloves be the minimum PPE for early entry after all pesticide applications.

In the NPRM, there was a generic REI for pesticides in toxicity categories III and IV of "until sprays have dried, dusts have settled, or vapors have dispersed." Since the proposal contained a complete ban on hand labor activities during that period, there was no need to specify PPE

for early entry for pesticides in toxicity categories III and IV.

In the final rule, the Agency has established a 12-hour REI in lieu of the generic "until sprays have dried, dusts have settled, or vapors have dispersed" and specifies minimum PPE for early entry for all pesticides.

The prohibition on most early-entry activities in the final version of part 170 has eliminated the need for most uses of early-entry PPE. For those exceptional circumstances when early entry is permitted, the Agency has decided to require early-entry workers to wear the PPE required for an applicator of the pesticide (with the exception of respiratory protection) for pesticides in toxicity categories I and II. The Agency has specified that the minimum attire for early entry for pesticides in toxicity categories III and IV will be coveralls, waterproof or chemical-resistant gloves, socks, and shoes. This minimum attire is based on the Agency's desire to have the body protection (coveralls) provided, cleaned, and maintained for the worker and on the Agency's belief that some early-entry workers may receive greater exposure to pesticides through residues in the treated area than handlers may receive during application. The Agency reserves the right to establish different PPE requirements for early-entry activities on a case-by-case basis if evidence supports such action.

The Agency does not believe that requiring PPE or "normal work attire" after the expiration of the REI is warranted. Where data indicate that such protection is needed, the Agency will establish such a requirement; however, it is more likely that the REI would be extended until the PPE would no longer be needed.

2. *Personal protective equipment (PPE) for pesticide handlers.* Ideally, each pesticide product labeling should list specific PPE reflecting the formulation, anticipated exposure level, and toxicity of the product. These determinations are made or are refined as products are registered or reregistered. However, the Agency acknowledges that many pesticide labels require PPE for handlers that is inadequate by the Agency's present standards. The Agency proposed to establish PPE requirements until appropriate product-specific requirements can be established. Registrants would be required to list the requirements on the labeling for each pesticide product. In this final rule, the Agency is establishing, through parts 156 and 170, minimum requirements for PPE for handlers of all agricultural pesticides in various exposure situations.



Handlers, such as those mixing, loading, and applying pesticides and those involved in flagging, repairing, adjusting, changing, or cleaning equipment face potentially dangerous levels of exposure to pesticides unless adequate protection is used. The risk of exposure is especially high for handlers who perform all these tasks and for persons, such as commercial pesticide handlers, who perform these tasks frequently.

Results of numerous studies indicate that more than 97 percent of the pesticide to which the body is exposed during handling (especially during spray applications) is deposited on the skin. The hands and forearms account for the highest percentage of total dermal exposure. For ground applicators, mixers, and loaders, respiratory exposure constitutes a small percentage of total exposure in outdoor handling operations unless highly volatile formulations are involved. Respiratory exposure cannot be ignored in outdoor applications, however, since nearly 100 percent of any pesticide that enters through the lungs and gastrointestinal tract is absorbed. When pesticides are used in enclosed structures, the risk of respiratory exposure is greater than when pesticides are used outdoors.

*a. Basis for the requirements.* The Agency considered whether the toxicity category of the formulated product was the appropriate basis for the PPE requirements for pesticide handlers. When the formulated pesticide product is diluted by the user, the resulting solution may be less toxic than the concentrated formulated product. When EPA establishes product-specific PPE requirements during registration or reregistration, it uses any available registrant-supplied data on the acute toxicity of the diluted product to determine the appropriate PPE for exposure to the diluted product. The Agency proposed to base the requirements on the toxicology of the formulated product. By submitting data on the toxicity of the diluted pesticide product, however, registrants could reduce the PPE requirements for handlers, except for mixers and loaders who would be exposed to concentrates.

The Agency proposed that handlers of pesticides that are in toxicity category III or IV because of acute dermal or skin irritation potential be required to wear "normal work attire" (long-sleeved shirt, long pants, shoes, and socks). For pesticides that are in toxicity category III because of dermal toxicity or skin irritation potential, handlers also would be required to wear chemical-resistant gloves. For pesticides that are in toxicity

category III or IV because of inhalation toxicity or eye irritation potential, the Agency proposed no minimum PPE requirements, but reserved the option of requiring PPE for those hazards on a product-specific basis as warranted by evidence.

Most comments supported the Agency's proposal to base PPE requirements on the toxicity of the formulated product and the Agency's use of a table to determine the appropriate attire for a pesticide product.

Some comments recommended that PPE for applicators be based on the toxicity of the dilute product; another requested that PPE be based on the type of formulation as well as the acute toxicity. One comment stated that toxicity should not be the sole determinant of PPE and that use pattern and mode of action must be considered.

This regulation allows registrants that have data on the toxicity of the dilute product to use that data in establishing the PPE requirements for handlers exposed to the diluted product. However, basing PPE on the type of formulation, the use pattern, or the mode of action is best accomplished on a product-specific basis during the case-by-case review of a product. Therefore, the Agency will not consider these factors in establishing the generic PPE requirements for pesticide handlers in part 156.

*b. Types of personal protective equipment (PPE) required—i. Body protection.* In the current regulations, "protective clothing" is defined as "at least a hat or other suitable head covering, a long-sleeved shirt and long-legged trousers or a coverall-type garment (all of closely woven fabric covering the body, including arms and legs), shoes and socks." The Agency now deems this clothing inadequate to protect either handlers or workers entering treated areas before the expiration of the REI.

In the NPRM, the Agency proposed minimum PPE requirements that would vary according to: (1) The acute toxicity of the pesticide, (2) the type of employee activity, (3) route of exposure, and (4) the presence of engineering controls. Under the proposal, all handlers and early-entry workers exposed to pesticides in toxicity category I or II because of either dermal toxicity or skin irritation potential would be required to wear a protective suit over normal work attire.

Some comments requested that chemical-resistant protective suits be required for handling all pesticides in toxicity categories I and II, especially

for airblast applications. One comment requested a change in the definition of "protective suit" to include suits made of nonwoven materials.

The Agency has changed the term "protective suit" to "coverall" and changed the definition. "Coverall" means any loose-fitting one- or two-piece garment that covers, at a minimum, the entire body except the feet, hands, and head.

The Agency considered requiring the use of a chemical-resistant protective suit when handling pesticides in toxicity category I (acute dermal), but was persuaded that two layers of clothing provide adequate protection. To minimize dermal exposure to pesticides, protective garments must be worn to cover any body area(s) of concern. Cotton or cotton and polyester, i.e., woven fabrics, are preferred for work clothing because they are more comfortable to wear, and they can be washed. Appropriate protective coverings, such as coveralls, can reduce the exposure to pesticide users' trunk area, arms, and legs by 99 percent. One study concluded that the use of rubberized clothing did not provide more protection than the regular work clothing (consisting of cotton shirts and trousers worn under long-sleeved coveralls). The final rule, however, allows users to wear a chemical-resistant protective suit as an alternative to the two layers of clothing. The development of various types of disposable chemical-resistant garments made of nonwoven materials, such as Tyvek (spunbonded olefinic fibers), gives pesticide users a wide choice of protective materials.

Most comments on the requirement to wear a protective coverall over another layer of clothing asked the Agency to reconsider; objections centered on the problems of heat-related illness and discomfort associated with wearing two layers of clothing in the summer months. One comment stated that if a protective suit is worn and becomes contaminated, it can be discarded and replaced with a clean suit on site, whereas if the normal work attire becomes contaminated, the worker may have to return home in contaminated clothing.

Numerous comments stated that the more uncomfortable protective clothing becomes, the more likely it is that employees will avoid wearing the protective clothing or the more likely they will not complain to the appropriate authority about the lack of protective clothing in the event the employer fails to furnish such clothing. Another comment stated that, in an emergency, stripping the coverall off



quickly, washing, and putting on the extra coverall that is required to be kept at the decontamination site would be more protective than a false sense of security brought by two layers of clothing.

Some comments stated that convincing handlers to wear a coverall and chemical-resistant gloves would be a major breakthrough in PPE and that a requirement for two layers of protection might discourage any compliance.

The Agency considered the comments on the requirement for handlers and early-entry workers to wear a long-sleeved shirt and long pants under a coverall in activities involving pesticides that are in toxicity category I or II because of dermal toxicity or skin irritation potential. A review of the literature revealed several studies supporting the concept of layering as an effective protective system; the protection afforded by protective clothing is proportional to the thickness and the closeness of the weave.

The Agency recognizes that the use of PPE in hot, humid working conditions may lead to heat stress and discomfort. But the alternative of requiring the use of a single-layered chemical-resistant suit would not solve these problems. The Agency does not consider a coverall without an additional layer of clothing to be protective for pesticides with an acute dermal toxicity value in toxicity category I or II. The Agency does recognize, however, that pesticides in toxicity category I present a greater hazard and risk than those in toxicity category II. Therefore, the Agency will require either a chemical-resistant protective suit or a coverall worn over a long-sleeved shirt and long pants when handling pesticides classified as toxicity category I for dermal toxicity or skin irritation. For handling pesticides classified in toxicity category II for dermal toxicity or skin irritation, a chemical-resistant protective suit or coveralls worn over a layer of clothing that covers the trunk area (e.g., T-shirts and shorts) is specified.

Many comments agreed with the proposed PPE requirements for "normal work attire," which was defined as long pants, a long-sleeved shirt, shoes, and socks, for handlers of pesticides in toxicity categories III and IV. But several other comments requested that more than "normal work attire" be required for handlers of pesticides in toxicity categories III and IV.

The Agency has considered the comments regarding the PPE required for handling pesticides in toxicity categories III and IV and has determined that the PPE proposed is adequate to protect handlers of these

pesticides. The Agency has written the PPE requirements to create an incentive for users to choose less acutely toxic pesticides whenever possible.

Several comments requested EPA to clarify that its intent was to establish "normal work attire" for pesticide-handling activities and not for all work on agricultural establishments.

To eliminate the confusion, the phrase "normal work attire" is not used in the final rule. PPE and other clothing required for handling the pesticide will be specified on pesticide labeling.

ii. *Hand protection.* Dermal exposure of the hands and forearms is the most significant route of pesticide exposure for hand laborers, applicators, mixers, loaders, and other persons who are exposed occupationally to agricultural pesticides and their residues. It has been estimated that chemical-resistant gloves can reduce hand exposure by as much as 98 percent.

The Agency proposed to require chemical-resistant gloves for all early-entry and pesticide handling situations involving pesticides that are in toxicity categories I, II, or III because of dermal toxicity or skin irritation potential. (No gloves were required for early-entry or pesticide handling situations for pesticides in toxicity category IV). Leather gloves, uncoated cloth gloves, and fingerless gloves are not acceptable, because liquid and particulate pesticides can penetrate them. The Agency considered an exception for early-entry workers handling roses, because sturdy, flexible glove materials such as leather will withstand the wear and tear from thorns while providing sufficient dexterity.

Few comments discussed glove materials. The greenhouse industry asked to be permitted to wear leather gloves while working with roses and other thorny plants.

The Agency has determined that multiple-use cotton gloves and cotton-lined gloves are not acceptable for use in pesticide handling or early entry because they are difficult to decontaminate after use. If suitable puncture-resistant and chemical-resistant gloves are not obtainable, the Agency will allow the use of leather gloves for working in thorny plants, with two restrictions: (1) Chemical-resistant glove liners must be worn, and (2) leather gloves that have been worn once for protection from pesticide exposure shall thereafter be worn only with chemical-resistant liners.

A few comments stated that either the pesticide registrant or EPA should give more specific guidance on how to determine which glove materials are

chemical-resistant to specific pesticide formulations.

The Agency concurs and has developed a guidance package for pesticide users on the selection, use, and maintenance of chemical-resistant gloves. The final rule requires registrants to specify in the product labeling the appropriate type of gloves to be used with the product. EPA will continue to cooperate with the American Society for Testing and Materials to develop testing criteria for chemical resistance in gloves and to sponsor research into the chemical resistance of various glove materials.

iii. *Foot protection.* The feet may be exposed to pesticides from spills, splashes, or downward sprays, and from walking through vegetation after application while sprays are still wet. The Agency proposed to require chemical-resistant footwear for handlers and workers entering areas treated with pesticides in toxicity category I or II (dermal/skin irritation).

A few comments stated that wearing chemical-resistant footwear can be uncomfortable and may cause a foot disease similar to trench foot. Many comments urged the Agency to reconsider the requirement for chemical-resistant footwear in forests, stating that leather boots are worn for traction on rocks and debris, protection from pests and snakes, and for durability. The comments stated that the safety hazards of working in this environment increase if chemical-resistant boots or boot covers are required.

Because of the problems inherent in decontaminating non-chemical-resistant footwear, the Agency will continue to require the use of chemical-resistant footwear for pesticides in toxicity categories I and II (dermal toxicity or skin irritation). However, the Agency is persuaded by the comments that for physical safety, pesticide handlers and early-entry workers in rough terrain should be permitted to wear leather boots if chemical-resistant boots of sufficient traction and durability are not obtainable.

iv. *Eye protection.* The eyes and face may be exposed whenever there is a chemical splash or a high level of mists, vapors, or dusts during mixing, loading, and applying pesticides or whenever residues are dislodged from foliar surfaces above the head of the worker. The Agency proposed to require the use of goggles or a face shield by all handlers and early-entry workers exposed to pesticides with toxicity category I or II eye irritation potential. Goggles or a face shield also would be required during mixing and loading



using pressurized closed systems because of the high risk of exposure and serious eye injury if the system ruptured.

Many comments pointed out that goggles and face shields are uncomfortable during prolonged use in hot weather and that there should be some provision for employees who wear eyeglasses. Others commented that for most pesticides and use circumstances, several styles of eye protection provide near goggle-level protection at greatly increased levels of wearer comfort and with less tendency to fog.

The Agency is persuaded that safety glasses with protective shields at the eyebrows and temples provide adequate eye protection in most pesticide handling and early-entry situations. Because they are more acceptable than goggles to employees, they would be more likely to be used. The regulation, therefore, has been modified to require the use of "protective eyewear" in handler and early-entry situations involving pesticides in toxicity categories I and II for eye irritation. When "protective eyewear" is required, the employer shall provide goggles, a face shield, or safety glasses with side shields and brow guards.

For products in toxicity category I for eye irritation, the Agency may, on a case-by-case basis, require the labeling to include a requirement for the use of goggles or a face shield.

*v. Respiratory protection.* The Agency proposed to require handlers and other workers who enter treated areas before vapors have dispersed to wear respiratory protection devices approved by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA), if the pesticide is in toxicity category I or II for inhalation toxicity. The Agency did not propose to require respiratory protection for handlers of pesticides with inhalation toxicity classified in toxicity category III or IV or for workers entering treated areas after pesticide vapors have dispersed.

Several comments pointed out that although several types of respirators have NIOSH/MSHA approval for protection against pesticides, NIOSH does not test respirators for individual pesticides. Therefore, requiring "a NIOSH- or MSHA-approved respirator" does not assure the use of the most appropriate respirator for a specific pesticide. The comments also noted that the NIOSH instructions that accompany air-purifying respirators refer the user to the pesticide label for limitations of use. Some comments urged the Agency to require pesticide manufacturers to

provide respirator instructions in the product labeling.

Most comments urged the Agency to require respirator fit-testing before a respirator is used and a physician's approval that the handler's physical condition will permit him/her to use a respirator safely. One comment stated that the use of forced air respirators would eliminate some of the fitness and fit testing problems.

Several comments suggested that the selection, use and maintenance of respirators be consistent with the program described in the OSHA standards (29 CFR 1910.134) and/or that the specific recommendations be provided in the Agency's rule.

The Agency agrees with the comments regarding the need for a comprehensive respirator use program encompassing selection, correct use, and appropriate maintenance of respirators. EPA has developed a guidance document on the use of respirators in agriculture. The language in the final rule offers some guidance on changing filters, cartridges and canisters in the absence of direction from the manufacturer; part 156 requires the registrant to specify what type of respirator should be used with a product that requires respiratory protection for handling.

*c. Exceptions to personal protective equipment (PPE) requirements.* The Agency has retained the requirements proposed for aerial applicators. Pilots in enclosed cockpits will not be required to wear PPE. Pilots in open cockpits must wear the PPE required for a ground applicator of the product in use, except that chemical-resistant footwear is not required, and a helmet with visor may be used in lieu of a hat and protective eyewear. Pilots in both types of equipment must wear the protective gloves required by the labeling when entering or exiting a plane whose exterior is contaminated by pesticide residues.

The Agency proposed that pesticide handlers in the enclosed cabs of ground vehicles should be exempt from PPE requirements. If the enclosed cab did not contain a properly functioning gas- or vapor-removing ventilation system, any labeling requirement for a respirator would be in effect, but all other PPE would be waived. Fully enclosed cabs without air filtration have been shown to reduce dermal (but not respiratory) exposure substantially for airblast applicators. The Agency was concerned, however, that heat buildup in unventilated enclosed cabs might lead applicators to open windows for comfort, which would negate the benefit of the enclosed cab. The Agency specifically sought comment on this

issue. The Agency also was concerned about the possibility of handlers leaving the enclosed cab in the treated area, becoming contaminated, and then returning to the enclosed cab. Therefore, EPA proposed that all PPE required for a ground applicator of the pesticide must be available for use any time the handler leaves the cab in the treated area.

Most comments expressed concern that applicators in cabs without ventilation will open the window on a warm day, thus negating the cab's protection.

Many suggested that full PPE should be required for operators in an enclosed cab without ventilation. One comment noted that there is no way to eliminate the need for handlers to leave the cab in the treated area; since protective clothing must be worn, employers will use this as an excuse for not providing protective cabs. An equipment manufacturer commented that their studies have shown that contaminated clothing (gloves on the steering wheel or dash, etc.) is a major source of chemical contamination inside cab enclosures.

The Agency acknowledges the potential for defeat of the enclosed cab's protection by opening windows or by contaminating the interior of the cab with clothing or equipment containing pesticide residues. However, EPA supports the use of engineering controls in lieu of PPE where feasible; an enclosed cab used correctly is protective. The Agency is aware that pesticide applications in many regions of the country take place where discomfort from heat is not a factor, even in enclosed cabs. The Agency is aware also of many situations where the applicator is not the mixer or loader or the person who repairs or adjusts the application equipment, and therefore would not be required to change into or out of PPE for these activities. Under these conditions, it would be inappropriate to require PPE in the enclosed cabs. Therefore, the Agency continues to waive the PPE requirements, with the exception of any respirator requirement, for applicators in enclosed cabs. If the windows of the cab are opened at any time during the application or the enclosure is otherwise breached, the cab is no longer considered enclosed, and applicators would be required to wear the PPE required on the pesticide labeling for applicators of the product.

Users must wear PPE when leaving the cab only if they will contact pesticide-treated surfaces in the treated area. They may leave the cab for a rest stop or other reason (other than



handling pesticides) without wearing PPE if they will not be in contact with pesticide-treated surfaces in the treated area. The applicator may leave the cab and walk away from the just-treated area without PPE.

The Agency is concerned that the interior of the enclosed cab may be contaminated from pesticide-contaminated clothing worn or taken into the cab. Therefore, the Agency changed the language of the rule to prohibit such an action. Once PPE is worn in the treated area, it may not be worn into or taken into the cab.

A few comments concurred with the Agency's proposal to waive the use of all PPE, including respirator, if the enclosed cab has a properly functioning, positive-pressure ventilation system that removes vapors from the air. The Agency based its proposal on studies indicating that positive-pressure, charcoal-filtered ventilation systems on enclosed cabs can remove more than 99 percent of pesticide vapors and sprays during air intake. Other comments stated that enclosed cabs were unproven as protection for airborne hazards and that data are needed that demonstrate the effectiveness of the protection offered by an enclosed cab.

The Agency believes that incentives should be used to encourage the use of engineering controls instead of PPE when such technology exists. In the final rule, persons occupying an enclosed cab that has a properly functioning ventilation system, which is used and maintained in accordance with that manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a government agency to provide respiratory protection equivalent to or greater than the respirator required by the pesticide labeling, may substitute a long-sleeved shirt, long pants, shoes and socks for labeling-specified PPE.

*d. Duties relating to personal protective equipment (PPE).* The Agency proposed that all PPE required by the pesticide product labeling for a particular work activity be provided to handlers and early-entry workers and that the employer clean and maintain such equipment.

In the final rule, EPA has modified the language to clarify who is responsible for fulfilling the various requirements and provisions. This section now specifically states that the employer shall provide the appropriate PPE in clean and operating condition. This provision does not prohibit handlers who own PPE, such as a respirator, from using that equipment. The employer, however, would be required to assure that such equipment is cleaned and

maintained. The employees would not be allowed to wear home or to take home the equipment unless it had been cleaned first.

A few comments indicated uncertainty about who would provide "normal work attire" (long-sleeved shirts, long pants, shoes, and socks) when it is required by the labeling and whether it is considered to be PPE. The Agency does not include normal work attire in the definition of PPE; therefore, it is not part of the employer's responsibility to provide or maintain this attire.

The Agency perceives the appropriate decontamination of PPE as a major area of concern. Significant levels of some pesticides can remain in clothing or equipment if it is not laundered correctly or if prescribed decontamination procedures are not followed. Surveys of pesticide users, especially agricultural workers, indicate that a large percentage do not follow any precautionary procedures when cleaning contaminated clothing and equipment. If PPE is reused without cleaning or laundering, the protective effect may be reduced or eliminated. Therefore, the Agency has determined that it is appropriate for the employer to assure that PPE is cleaned and maintained properly before it is reused.

The proposal required that after each use all PPE be washed thoroughly with detergent and hot water or be cleaned according to the manufacturer's instructions and that it either be dried thoroughly before being stored or be placed in a well-ventilated place to dry. The Agency also proposed that PPE be stored away from pesticide-contaminated places and be stored separately from personal clothing to avoid contamination of either clean PPE or clean personal clothing.

A few readers interpreted the proposal as requiring laundry facilities on-site (on the farm, forest, or nursery, or in the greenhouse). It does not.

Several comments said EPA did not provide sufficient guidance for the implementation of the proposed cleaning and maintenance provisions. Two comments questioned appropriate decontamination for chemical-resistant protective clothing and equipment; fabric clothing can be laundered daily, but chemical-resistant suits are expensive and are damaged by constant laundering in hot water. One was concerned that conventional washing of chemical-resistant suits may result in low-level contamination of the inside surfaces that might not occur otherwise. It suggested modifying the language to state that chemical-resistant suits, hats, boots, and gloves need not be washed or

cleaned daily, but must be kept in a condition of cleanliness consistent with employee safety.

Several comments questioned the conditions under which the employee may be permitted to wear or to take home "normal work attire" that has become contaminated. To prevent these situations, some comments advocated that the employer should be responsible for cleaning and maintaining "normal work attire," i.e., long-sleeved shirts, long pants, shoes, and socks worn during handling or early-entry activities when it is specified on the labeling.

Several comments from the forestry industry asserted that it was awkward to clean and maintain PPE in typical forestry situations. Some of these requested that PPE and laundry requirements be eliminated for pesticides in toxicity categories III and IV and for diluted pesticides in toxicity categories I and II.

The Agency has studied the comments on this issue. As stated above, normal work attire is not considered to be PPE; thus, the employer has no responsibility to provide it. However, EPA is concerned about employees' wearing or taking home pesticide-contaminated clothing or equipment, regardless of whether the clothing is provided by the employer or by the employee. The Agency, therefore, is inclined to require that employers clean and maintain any attire an employee wears while handling pesticides or performing early-entry tasks. However, such an option was not discussed in the NPRM, and the economic impact of such a requirement has not been assessed. The Agency must study the costs and logistics involved in such a requirement and may publish a proposal on this issue for public comment at a later time. Although it would be prudent for employers to clean and to maintain pesticide-contaminated work clothing for their employees, it is not a requirement of this final rule.

If a pesticide used in forestry requires the use of PPE, such equipment must be cleaned and maintained by the employer. This cleaning and maintenance need not be done on the employer's premises or immediately following use. EPA left flexibility in the requirement to allow for employers to collect contaminated PPE and to clean it at their convenience at a location of choice. Therefore, forestry employers could provide their handlers (and early-entry workers) with a clean set of PPE for each day of handling activities and provide a chemical-resistant container that could be securely fastened, such as



a sturdy plastic bag, for storing the contaminated PPE until it is cleaned.

EPA's directive to wash PPE in hot water and detergent is the alternative when there are no directions from the manufacturer on how to clean and maintain equipment. The goal is to remove pesticide residues as completely as possible so that the equipment is clean the next time it is used. Evidence indicates that non-chemical-resistant clothing and equipment, as well as many chemical-resistant items, should be cleaned in hot water and a heavy-duty detergent to remove pesticide residues most efficiently. If manufacturers of chemical-resistant gloves, boots, or protective suits indicate another method of cleaning and maintaining the equipment, it must be followed.

EPA proposed that persons responsible for cleaning the PPE would be informed that the equipment might be contaminated with pesticides. Only a few comments were received on this issue. One comment requested that any person cleaning the PPE be required to provide written verification that he has been warned of the hazards.

EPA concurs with the sense of the comment and has rewritten the rule to require the employer to inform persons who clean or launder PPE or other pesticide-contaminated items of the possibility that such items may be contaminated with pesticides and of the potentially harmful effects from exposure to pesticides. The employer must also inform these persons of the appropriate procedure(s) for handling and cleaning such items.

Some comments requested more specific guidance as to who would be responsible for inspecting the PPE before each day of use. A few suggested that the inspector be a certified applicator; others suggested that training on the appropriate inspection of PPE would be beneficial.

It is the employer's responsibility to assure that the PPE is maintained properly, and this includes inspecting the PPE for damage and other defects. This may be done by the employer, by a designated supervisor, or by the employees if they have been instructed in the care and cleaning of PPE. The Agency believes that it is not practical in many agricultural situations to require a certified applicator to inspect all PPE before each day of use.

EPA concurs that information on procedures for inspecting PPE would be useful. The Agency has developed a guidance brochure on the maintenance and inspection of PPE such as protective eyewear, gloves, protective footwear, chemical-resistant protective suits, hats or hoods, and coveralls.

*e. Heat-related illness (heat stress).* Although chemical-resistant suits are not part of the minimum PPE proposed by this regulation, they are required by the labeling for a few pesticides. The NPRM prohibited tasks requiring chemical-resistant suits where a combination of temperature, humidity, and time required to complete a task might be expected to cause heat-induced illness. The onset of these illnesses depends on a variety of factors, and EPA expressed the belief in the NPRM that users could be expected to anticipate when work activities might result in heat stress.

Many comments expressed concern about the risk of heat stress in agriculture with respect to the use of PPE when handling pesticides in warm climates, stating that guidance and training were central to enabling employers and employees to prevent heat-related disorders. Nearly every comment disagreed with EPA's assumption that the employer could ascertain when heat-related illness was a risk and asked EPA to give guidance about the conditions that would warrant limiting work due to heat stress concerns.

Some comments stated that it is inappropriate and unfair to ask employers to make decisions about heat-induced illness, a complicated and potentially life-threatening condition; farmers and ranchers have no training in health care. The comments stated that the employee should be trained to recognize the early signs and symptoms of heat-induced illness and be permitted to take work breaks, remove chemical-resistant suits (in a clean area), seek medical attention, or take other reasonable measures to alleviate those symptoms.

A few comments requested that PPE not be used or that the protective suit be permitted to be unzipped during applications when the applicator was upwind of the spray. Some comments stated that environmental conditions in some States or regions make wearing any PPE a problem because of extreme heat or humidity.

A few comments requested that specific temperature and humidity guidelines be established.

The National Institute for Occupational Safety and Health offered some recommendations for reducing heat stress when PPE is required.

EPA has determined that heat-related illness is a potential problem with the use of many types of PPE. Therefore, the Agency has modified the language in the rule to state that the employer should use appropriate precautions to prevent heat-related illness (§ 170.240(g)). EPA

has developed a guidance document that addresses recognition, prevention, and treatment of heat stress under agricultural working conditions. This document can be used by employers to determine suitable measures for preventing heat-related illness, as required by the rule.

EPA also believes that training handlers and early-entry workers to recognize the early warning signs and symptoms and to implement appropriate first-aid measures for heat-related illness will help to minimize the risk of such illnesses. Thus, EPA has modified the requirements for the training programs for handlers and the instructions for early-entry workers to include information about heat-related illness.

The establishment of specific temperature and humidity limits was determined to be inappropriate, because they are only two of several factors that contribute to the onset of heat-related illness. The Agency is persuaded that employers may be able to complete necessary pesticide handling activities, even in very warm weather, by acclimating handlers and early-entry workers, providing plenty of drinking water, modifying work schedules and work/rest cycles, and using portable cooling devices.

#### *E. Decontamination*

The Agency proposed that water, soap, and single-use towels be available during any work activity where there is potential employee contact with concentrated or diluted pesticides or with surfaces that have been treated with pesticides.

For pesticide handlers and early-entry workers, decontamination facilities would be required at all times since these activities have the greatest risk of exposure. For persons working in treated areas after the REI has expired, the Agency proposed to limit the requirement to activities in areas that have been treated during the current growing season.

Many comments questioned the need for decontamination facilities during an entire crop cycle, stating that a time should be specified.

The Agency believes that there is a need for decontamination facilities after the end of the REI. The Agency recognizes, however, that some pesticides may have been applied long before workers enter the area. EPA agrees with the comments that suggested that the proposed requirement might be excessive, and it sought to determine what might be a reasonable



time during which decontamination facilities should be available.

Knaak, Iwata, and Maddy, in a 1989 investigation of a series of pesticide poisoning incidents that occurred after the expiration of an REI, found that the median time from application in these incidents was 29 days. The Agency has studied more recent data regarding the incidence of multiple-case systemic illnesses of agricultural field workers from exposure to residues of organophosphates in California. Among the 44 incidents for which data were provided, the mean length of time from application to poisoning was 20 days, with a median of 16 days. The range was from less than 1 day to 66 days, although this latter figure was an outlier and did not appear to be well substantiated. Excluding parathion (no longer registered for most crops) and this outlier, the longest period between application and reentry poisoning was 39 days. The Agency believes that poisoning incidents that occur more than 30 days beyond the REI probably stem from a miscalculation in establishing the REI that is listed on the labeling.

As part of the Pesticide Hazard Assessment Project funded by EPA in 1985, a computer model was developed to estimate how long hazardous residues might persist. For one of the pesticides studied the hazard was predicted to remain for 30 days after the REI had expired. The Agency is seeking to corroborate and refine this model. In the meantime, the Agency believes it should institute a safety factor in the Worker Protection Standard to compensate for this potential variability.

In response to the comments, the Agency has modified the language in the final rule to require decontamination facilities for workers entering a treated area for which an REI is in effect and for workers entering a treated area within 30 days after the expiration of the REI.

The NPRM also stated that the water shall be potable, in adequate supply, at a temperature that will not injure the eyes, and reasonably accessible to each worker's place of work.

There were many comments about the proposed rule's reference to potable water. Those supporting the requirement for potable water said that OSHA requirements for field sanitation already require potable water in the fields. Comments from representatives of the forestry industry pointed out that potable water might not be available to forestry workers working in areas with no vehicular access.

Those opposing the requirement for potable water stated that farm wells are not required to meet the Safe Drinking Water Act requirements, so it is

unreasonable to expect water supplied from a farm to meet this standard for quality. In their comments on the draft final rule, under FIFRA section 25(a), the U.S. Department of Agriculture (USDA) stated that the decontamination provisions of the draft final rule would be unreasonably burdensome to employers because of the requirement for potable water for handwashing purposes. They stated that the standard for potable water is higher than necessary for washing purposes and that clean water should be sufficient. Clean water, they suggested, would be readily available from farm and irrigation wells, whereas potable water may not be. USDA believes that changing the decontamination provisions to permit the use of clean water would greatly reduce the burden and expense to farm employers without significantly reducing worker protection. They suggested that an appropriate standard might be the regional or local standard for water safe for swimming.

As stated in the NPRM, the Agency proposed the standard of "potable" for the quality of water for two primary reasons:

(1) "OSHA's Field Sanitation Standard (29 CFR 1928.110) requires potable water in the fields for hand laborers, intended not only for washing but also for drinking purposes. Even though EPA's proposed requirement was intended to provide water only for washing, in practice the water may be used by workers for drinking as well."

(2) "[O]nly 'potable' water can be defined in such a way that noncompliance can be clearly ascertained."

At the time of the proposal, EPA believed that since OSHA uses the potable water standard for its Field Sanitation Standard, it would be easier for employers to comply with one water standard than with two. However, EPA was reminded by commenters that approximately 89 percent of agricultural establishments are not currently covered by OSHA's Field Sanitation Standard and that EPA should be responsive to the burden to employers on those establishments.

EPA has been persuaded by the comments that a standard of "potable" may impose a substantial burden to agricultural employers, without a concomitant benefit to workers. EPA believes the goal of this requirement should be to ensure that workers and handlers will be provided with water that will not cause illness or injury when it contacts their skin or eyes and will not cause illness or injury if they should happen to swallow it. Thus, the Agency has been persuaded to eliminate the requirement for "potable" water and instead has required the provision of

water that meets the stated performance standards. This will permit employers to equip decontamination sites with water which is used for drinking on the agricultural establishment, but which may not meet the standard of potability in the Notice of Proposed Rulemaking.

In reexamining the options, EPA considered establishing the quality standard of "clean" water defined as water safe for swimming. However, the Agency was unable to ascertain how agricultural employers would be able to apply such a standard. In adopting a standard of water quality different from a potability standard, EPA remains concerned that in practice, some workers may drink the water, especially if no alternative source of drinking water were available in the field. Moreover, the Agency has concluded that water must be of a quality safe for drinking because (1) workers and handlers may accidentally swallow water in the process of washing/flushing their faces or eyes, and (2) workers and handlers may mistake wash water for drinking water. EPA believes that placarding water to indicate that it is not for drinking purposes would be a difficult and unwieldy requirement given the range of languages and degree of illiteracy among workers. EPA concurs with OSHA's stance in the preamble to the Field Sanitation Standard that they "would like to eliminate the use of signs in several languages to identify different classes of water quality in the same workplace and the errors that occur when water supplies are confused."

The Agency believes that defining decontamination/eyeflush water, in part, as water that "will not cause illness or injury if swallowed" will allow enforcement officials to ascertain noncompliance. EPA expects that the water used for drinking purposes on the agricultural or handler establishment will usually be the source of water for washing and eyeflushing. EPA notes that those establishments currently complying with the requirement for providing potable handwashing water to workers under OSHA's Field Sanitation Standard would also be in compliance with the EPA requirement for decontamination water if the same water were used. It is important to note, however, that EPA is not exercising any statutory authority in this rulemaking to address the general sanitation hazards addressed by the OSHA Field Sanitation Standard.

The Agency recognizes the difficulty in providing decontamination sites for employees working in areas with no vehicular access and is modifying the decontamination requirements for



activities performed more than 1/4 mile from the nearest place of vehicular access. For these remote work sites, the required decontamination site may be located at the nearest place of vehicular access, instead of within 1/4 mile of each worker or handler. Workers and handlers may use clean water from springs, streams, lakes, or other sources for routine and emergency decontamination at the remote work site, if such water is more accessible than the decontamination water located at the nearest place of vehicular access. The Agency has concluded that, in such circumstances, the risks from the use of water of uncertain quality are likely to be less than the risks from delay in removing pesticides or pesticide residues from the skin or eyes.

Some comments stated that "reasonably accessible" needs definition. Numerous comments suggested that decontamination sites should be no greater than 1/4 mile from employees. Others noted that the restricted-entry area is where contamination may occur, that decontamination sites should be made available there, and that water in a tank is protected in a treatment area.

The Agency believes that the language of this requirement should be consistent with the language of the OSHA Field Sanitation Standard requiring that the decontamination site must be reasonably accessible, not to exceed 1/4 mile or approximately a 5-minute walk from each worker's place of work. As a result, the rule has been revised to include a specific distance requirement of 1/4 mile. For agricultural workers, the decontamination site must not be in an area under an REI. For early-entry activities, the decontamination site may be in the area where the employees are working. For application activities, the decontamination site may be in the area being treated if the soap, single-use towels, and clean change of clothing are in enclosed containers and the water is running tap water or is enclosed in a container.

The Agency proposed that an eyeflush dispenser be provided during handling and early-entry situations involving a product that is a severe eye irritant, i.e., toxicity category I or II for eye irritation, signified to the user by a requirement for protective eyewear on the labeling. The dispenser would be immediately available for emergency use, e.g., it would be carried by the handler or on the handler's vehicle. The Agency solicited comment on whether the dispenser needs to be available during all activities or only certain ones,

whether each employee should carry a dispenser, and whether carrying a 1-pint dispenser on one's person represents undue weight burden.

The comments supported the requirement for requiring eyeflush dispensers for mixers and loaders. Several comments stated that eyeflush equipment should be available for all employees, but that not all workers need to carry eyeflush dispensers; only handlers have such a need. Again, language such as "otherwise immediately accessible" was thought to be vague. One comment included a copy of an OSHA Field Directive that cautions about the possibility of contamination of eyeflush water by *acanthamoebae*. Some comments suggested that if a pesticide is a hazard to eyes, it is best if each person carries a dispenser, but if that is not possible, a full pint for each 2 or 3 persons should be made available. Several comments noted that eyeflush containers carried by employees may be contaminated by pesticides.

The Agency is concerned that the language of the proposed rule may have led to some misconception about what water may be used for flushing the eyes in case of emergency. The decontamination water that must be provided for routine washing and emergency whole-body cleansing must not cause illness or injury when it contacts the eyes. Therefore, the Agency has added "emergency eyeflushing" as one of the basic functions to be met by that water. EPA wants to make clear that while special eyeflush dispensers may be used, any source of water that meets the standards for decontamination in the final rulemaking is acceptable for flushing the eyes. In appropriate instances, the language of the rule has been altered to change the requirement from "eyeflush dispenser" to "eyeflush water." In addition, these requirements have been combined in this final rulemaking to avoid confusion.

In response to comments about workers and handlers who need more immediate access to eyeflush equipment, the Agency requires that the emergency eyeflush water shall be carried by the handler or early-entry worker, or shall be on the vehicle or aircraft which the handler or early-entry worker is using, or shall be otherwise immediately accessible. Again, EPA wants to make clear that this water does not necessarily have to be in a dispenser. Any nearby source of adequate amounts of water meeting the definition of decontamination water satisfies this requirement.

The Agency is persuaded of the importance of protecting against bacterial and other types of contamination of the water used for washing and eyeflushing. Therefore, the final rule will require employers to assure that "at all times when the water is available" to workers and handlers, it will remain of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. The agricultural employer and handler employer will be responsible for making sure that the water is replaced and the container is cleaned often enough to prevent bacterial or other contamination that could cause illness or injury to employees using the water for washing or eyeflushing. In most circumstances this would mean replacing water in containers at least daily and regular cleaning of those containers.

#### F. Emergency Assistance

EPA proposed that all employees be informed of the name, address, and telephone number of the nearest physician, clinic, or hospital equipped to provide medical care in a pesticide poisoning or injury emergency. This information was to be displayed in a prominent location on the agricultural establishment at all times.

In pesticide poisonings or injury emergencies, the victims may be unable to transport themselves to the nearest medical facility. Therefore, EPA proposed that prompt transportation to an appropriate medical facility be made available when there is reason to believe that a worker or a handler has been poisoned or injured by a pesticide. In a possible pesticide poisoning or injury, the most effective medical care can be provided only through a correct diagnosis and prompt administration of the appropriate antidote or treatment. A doctor must know the name of the product or active ingredient to which the worker or handler has been exposed to ascertain the appropriate treatment. Thus, EPA proposed that in an emergency, workers and handlers be provided, if available, the product name, registration number, active ingredient(s), and first aid or antidote information and other information about the use of the pesticide and possible exposure to the worker or the handler. This information is available to pesticide users from the labeling of the product or from their knowledge of the product; the requirement to provide information did not require that the user maintain records or keep pesticide labels or containers.



In their comments on the draft final rule, under FIFRA section 25(a), the USDA stated that EPA needed to clarify when the employer is responsible for making available to the worker prompt transportation to an appropriate emergency facility. USDA stated that they interpret this provision to be applicable only while the employee is on the employer's property. EPA agrees and has clarified in the rule that the agricultural employer must provide such transportation when a worker is on the employer's establishment, including in any labor camp located on the establishment. The Agency has similarly clarified in the final rule that the handler employer must provide emergency transportation when a handler is at the place of employment or at the handling site.

The Agency found no other information among the few comments on this requirement to cause it to reconsider other aspects of the requirement; they remain in the final rule essentially as proposed.

#### *G. Pesticide Safety Training and Information*

Based on the conviction that training and information are essential components of a successful risk-reduction strategy, the NPRM proposed several requirements related to providing pesticide safety training to handlers and information to workers: (1) General pesticide safety information for workers through a poster to be displayed in the work place, (2) pesticide safety training for handlers and early-entry workers, (3) labeling-specific information to handlers, and (4) labeling-specific information to workers on request.

1. *General pesticide safety information—*a. *Poster.* The Agency proposed to require that general pesticide safety information be displayed on a poster in a prominent location on each agricultural establishment during the growing season. The poster would contain statements concerning pesticide hazards and recommended safety practices, the location of emergency medical care facilities, a sample of the warning signs used for posting treated areas, and statements concerning the rights and duties of employers, supervisors, and workers. All information would appear in English; if some workers read only another language, the poster either would be translated into that language or contain a statement in that language recommending that the workers have someone explain the information to them. Workers would be informed of the

location of the information and would be allowed reasonable access to it.

The Agency considered whether other methods of communicating this information to workers, such as oral instructions or a training program given either by employers or by other providers, would be more effective than a poster, and asked for comment on this issue.

Most comments favored a requirement for a pesticide safety poster. There were specific criticisms focused on the proposed content of the poster. Some comments stated that the language was too forceful; others criticized the language for not being emphatic enough. Some comments requested that the poster have definitions of the signal words used on labeling.

There were several comments concerning the location of the poster. One suggested that more than one poster be displayed per establishment; another recommended that pesticide users distribute information sheets to their workers to avoid intimidation and retaliation should workers attempt to study the information presented on a poster.

Some comments pointed to the difficulty of posting information at forest work sites and requested flexibility to post at the crew headquarters or assignment area.

The final rule maintains the requirement for agricultural employers and handler employers (other than employers on commercial pesticide handling establishments) to display pesticide safety information in a poster format at a central location, with some modification of the proposed requirement. Although the final rule also requires that workers and handlers receive oral or audiovisual training in pesticide safety, the Agency believes that, at least for workers who are literate, a pesticide safety poster will serve as an important reinforcement and reminder of the information learned in the training program. A poster also will provide a convenient place in the workplace to make note of specific emergency medical information, i.e. telephone numbers and addresses.

The Agency concurs with many of the comments concerning linguistic complexity, emphasis, and other aspects of the proposed pesticide safety poster. It has decided that the exact wording and format do not belong in part 170 because changes may be needed as EPA and others gain new information about pesticide safety. In lieu of requiring the employer to display specified items of information, EPA is requiring that general topics be covered in simple,

emphatic language. EPA intends to publish a poster designed to address many of the concerns raised in the comments and intended to meet the part 170 requirement. Employers may use the EPA poster or a poster of similar content that meets the requirements of part 170. The Agency will make such a poster available through numerous distribution sources and will encourage other organizations to produce similar posters.

The final rule permits employers of forestry workers or handlers to display the poster at a place other than the forest work site, as long as it is reasonably convenient for workers or handlers and they are informed of the location. EPA does not believe that it is necessary for employers to distribute this information to workers or handlers in written form. EPA believes that the requirement as worded makes it clear that only one poster need be displayed per agricultural establishment, even if there are several work sites, e.g., more than one greenhouse or field, as long as each employee has access to it. EPA has made no changes to the employer's duties to maintain the poster in legible condition and update the emergency medical care information as necessary.

EPA has been convinced by comments that requiring the items of information on the poster to be translated is impractical. Since the purpose of the poster in the final rule is to reinforce worker or handler training, which must be given in a manner the worker or handler can understand, the requirement for translation has been dropped.

b. *Training for agricultural workers.* The Agency's request for comment on the most appropriate method for conveying basic pesticide safety information to workers stimulated many responses. The comments strongly supported some combination of oral, audiovisual, and written training in pesticide safety for all agricultural workers who may be exposed to pesticides or pesticide residues. Comments favoring training for all workers came not only from worker advocates such as unions and legal and health service providers, but also from universities, chemical companies, State lead agencies and other State agencies, growers, and grower organizations. A Farm Bureau chapter stated that it supported a one-time instruction given for employees, i.e. at harvest or at time of employment.

The comments stated that employers need to convey safety information to all workers orally because workers cannot or will not read written materials; oral instruction and training are the most



effective means to communicate information.

The few comments opposing training for workers were concerned about the logistics of doing the training, but did not oppose the concept of such training. In their comments on the draft final rule, under FIFRA section 25(a), the United States Department of Agriculture stated a concern about requiring training for agricultural workers before their first work period. They state: "In effect, the training provision will require that an employer provide training at the beginning of the season, and then, each time an additional worker or replacement worker is hired. . . . Given the extremely high variability and turnover within labor intensive agricultural work groups (1,000 percent is not uncommon), this procedure . . . would frequently result in virtually continuous training of small groups of new hires by each employer."

The Agency believes that providing information about ways to avoid or to mitigate occupational exposure to pesticides will reduce pesticide-related illnesses and injuries among agricultural workers significantly, and it has been convinced by the public comments that training as well as displaying a poster will better convey this information. A poster may be effective in conveying a simple message, but training more effectively conveys larger amounts of information. Reliance on a poster also presents problems relating to language literacy, and accessibility. Many agricultural workers go directly to the work site, rather than to a central location; these workers would have neither the opportunity nor the incentive to examine a poster. For workers not literate either in English or their native language, adding a paragraph to the poster in any language advising them to have the poster explained to them would do little good. From the comments, EPA has concluded that an oral or audiovisual training program is an essential complement to a poster in communicating pesticide safety information to workers, and therefore such a requirement is a necessary component of worker protection standards.

Although training each worker involves more employer effort than displaying a poster, the Agency has determined that the burden will not be significant. In their comments, many employers noted that they train their workers in pesticide safety, either because they feel it is important, or because they believe they are subject to the OSHA Hazard Communication regulations.

EPA has developed videotape and slide-tape training programs in English and in Spanish. The Agency intends to update these materials to correspond to the requirements of the final rule. These updated materials may be used by employers, the Cooperative Extension Service, State agencies, health care providers, and others; employers may obtain and use the training materials themselves or make arrangements to have workers trained by others.

The final rule has been modified to include a training requirement for workers. The modified rule requires agricultural employers to assure that before the 6th day that any worker enters any areas on the agricultural establishment where, within the last 30 days, a pesticide has been applied or an REI has been in effect, the worker receives pesticide safety training. For the first 5 years after the effective date of the rule, however, the rule allows employers up to the 16th day that any worker enters any areas on the agricultural establishment where, within the last 30 days, a pesticide has been applied or an REI has been in effect, to assure that the worker receives pesticide safety training. The Agency's intent is that workers receive training as soon as is practicable in each work situation, but not necessarily before their first exposure. In most instances, the Agency believes that whenever permanent employees and crews of employees are hired, the training could take place before the new-hires' first exposure period.

The longer time period (approximately 3 work-weeks for the first 5 years and approximately 1 work-week thereafter) allows agricultural employers more flexibility in arranging for training of workers they employ. Such flexibility will be most useful for establishments where there is frequent turnover in the workforce, such as with large crews of seasonal labor, or where one or more of the workers do not understand either English or Spanish and a person who can translate the training to such workers must be located. After the 5-year period, most of the existing agricultural workforce already should be trained and only workers new to agriculture will need to be trained. In addition, by the end of the 5-year period, agricultural employers should have access to training materials and translators in the necessary languages. Therefore, beginning 5 years from the effective date of the revised final WPS, workers must be trained before their sixth day of entrance to areas where, within the last 30 days, a pesticide has

been applied or an REI has been in effect.

The 6th (or 16th, as applicable) day of entry is not limited to a growing season or calendar year. It is the 6th (or 16th) day of exposure beginning when a worker enters areas on the agricultural establishment following a treatment with a pesticide to which the Worker Protection Standard applies. To avoid keeping track of such workers' days of exposure, two options are available to the agricultural employers. First, they can make sure that all workers are trained before their first exposure in such areas. Second, they can hire only those workers who have already received training and who possess a valid training certificate.

The Agency is also attempting to mitigate repetitive training by establishing a relatively lengthy (about 20 months) lead time before the training provisions of the final rule are enforceable. This lead time will allow a substantial number of workers to be trained in the interim. Once a large percentage of workers have been trained, the concern about repetitive training diminishes, because many new hires already will have received training.

The risks from pesticide residues decrease as the time increases between application and entry into treated areas. The Agency recognizes that in some circumstances or under some conditions residues might remain as long as 30 days after the end of an REI. Workers who enter the areas after that time have little to gain from the use of exposure-mitigation techniques. As a result, a grower who applies a preplant herbicide in March and uses no other pesticide treatments during the growing season would not be obliged to train workers who are hired to harvest the crop in October. Therefore, the Agency has chosen to require training for workers who enter an area where, within the last 30 days, a pesticide has been applied or an REI has been in effect.

All early-entry workers must be trained before they are allowed to enter an area before the REI has expired. Workers must receive training before they are allowed to enter treated areas before the expiration of an REI to perform tasks permitted under § 170.112 and involving contact with anything that has been treated with the pesticide, including, but not limited to, soil, water, or surfaces of plants, because EPA believes that their risk of exposure is higher than that for workers entering after the expiration of the REI.

Workers and early-entry workers must be given the specified training in



pesticide safety, unless they: (1) Satisfy the training requirement for pesticide handlers under this regulation, (2) satisfy the training requirement under part 171 of this chapter, or (3) are currently certified private or commercial pesticide applicators.

The training program must be presented in a manner the worker can understand, using nontechnical terms. The general pesticide information must be presented either orally using written materials, or audiovisually. As a minimum, the person conducting the training must have been trained as a pesticide handler under part 170.

The training may be presented using a translator or through sign language, if the employer assures that the worker can understand the information being presented. The fact that an employer does not normally provide training in the particular language of a job applicant, or that translation services are not readily available, does not absolve an employer of his training responsibilities under the WPS. Employers who provide training under the WPS should be cognizant that a refusal to hire an applicant who is unable to understand the language or languages in which the employer usually provides training may constitute discrimination on the basis of national origin. Discrimination on the basis of national origin is actionable under Title VII of the Civil Rights Act of 1964 or under the Immigration Reform and Control Act of 1986 (IRCA). There is also a possibility that the failure of an employer to provide training in any language and, instead to consistently require current training certificates from applicants for those jobs whose activities require WPS training, could thereby be causing a disparate impact which could, under some circumstances, be interpreted as constituting discrimination based on national origin. Employers desiring information regarding their responsibilities under Title VII of the Civil Rights Act of 1964 or the anti-discrimination provisions of the IRCA may contact the Equal Employment Opportunity Commission or the Special Counsel for Immigration Related Unfair Employment Practices of the U.S. Department of Justice, respectively.

The training programs for workers must include the same basic information as those for handlers, except for topics that are relevant only to handlers. For example, worker training need not include information related to the format and meaning of pesticide labeling or to transportation, storage, and disposal of pesticides. Worker training must include

information about the worker protection requirements of part 170 such as application and entry restrictions, the posting of warning signs and the design of the warning sign, oral warnings, the availability of specific information on applications, and protection against retaliatory acts. This will ensure that workers know what protection they should be receiving so they can encourage compliance with part 170.

The final rule requires that workers be retrained at 5-year intervals, measured from the end of the month in which the training is completed. The Agency believes that such renewal of WPS worker training will be adequate to convey the basic pesticide safety precepts to workers and to provide timely updates and reinforcement, without undue burden. The presence of the required pesticide safety poster in the workplace will serve as a reminder of pesticide safety practices for workers whose training may have occurred some time in the past.

In their comments on the draft final rule, under FIFRA section 25(a), USDA expressed concern about the absence of a formal mechanism to avoid repetitive training of each new hire on each agricultural establishment and welcomed the opportunity to work with EPA to develop such a verification program. A change to the rule was made. The rule now states that if the agricultural employer determines that a worker possesses an EPA-approved WPS training certificate and has no reason to believe it is invalid, that determination shall meet the requirements of assuring that the worker has been trained. The revised final rule requires trainers to assure that appropriate WPS training has been given to a worker before the training certificate is issued.

EPA expects that a wide variety of groups would be qualified to conduct WPS training and issue EPA-approved training certificates, including grower or commodity organizations, pesticide dealers, worker advocacy or interest groups, or others.

The use of an EPA-approved WPS training certificate is optional. The Agency encourages those trainers who, voluntarily, would like to maintain records or issue cards to workers to do so.

EPA and USDA intend to establish a joint task force to develop and implement a mechanism for verification of training. The task force would seek to reduce the amount of duplication in training and to establish a voluntary system of training verification. Once the mechanism for verification of training

has been determined, the Agency will issue guidance regarding the specific nature of the verification system. Such guidance is expected to include the following topics: (1) Criteria that the Agency will use for determining which persons or agencies will distribute the training certificates to prospective trainers; (2) description, format, and content of the training certificate; (3) mechanism for ascertaining the expiration of the training certificate; (4) content of the certification statement that prospective trainers would have to sign in order to receive the training certificates.

**2. Training for handlers.** The Agency proposed that general pesticide safety training would be required for all persons who are employed to handle pesticides intended for use on agricultural crops on farms or in forests, nurseries, or greenhouses. This requirement would be waived if the handler were certified as a private or commercial applicator. Each handler was to be instructed by a trainer who met certain minimum qualifications. The training program also had to meet minimum standards.

Many comments noted that EPA's handler training was similar to the training in chemical hazards required by OSHA's Hazard Communication Standard and questioned whether both requirements were necessary. There was concern that the apparent duplication of OSHA's Hazard Communication Standard may cause confusion for the growers and regulatory agencies.

EPA acknowledges that there may be some confusion regarding the relationship between the training required by the OSHA Hazard Communication Standard and by this standard and is working with OSHA to define more clearly the roles of the two agencies in hazard communication for pesticides users. For additional information on this topic, see EPA's proposed amendment to 40 CFR part 170 published elsewhere in this issue of the Federal Register.

Most comments on the training requirements for handlers supported the concept of such training. However, a few comments opposed any training requirement for pesticide handlers because they thought private applicator certification for all persons who handle agricultural pesticides would be burdensome and impractical.

EPA does not intend to require private applicator certification for all who handle agricultural pesticides, but the Agency does believe it is important that all persons who handle agricultural



pesticides have training in basic pesticide safety.

Some comments that strongly supported the concept of handler training had reservations or criticisms regarding specific provisions of the training requirements.

A few comments stated that being certified should not exempt handlers from being trained under part 170, noting that the proposed handler training requirements exceed the private applicator certification requirements in some States.

The Agency acknowledges that there may be variation among the States in the content and effectiveness of certification programs. EPA is revising the certification regulations (40 CFR part 171) to upgrade the national "core" requirements for certification of private and commercial applicators. When the revisions to part 171 are promulgated, all State certification programs for pesticide applicators will be required to contain the components of the upgraded national "core" requirements. The Agency is confident that all State certification programs then will meet or exceed the minimum requirements for training of pesticide handlers contained in part 170.

Several comments said that training should be specific to the task being performed, not general pesticide safety training and that, like labeling, training should fit the toxicity of the substance.

EPA is not persuaded that job- or product-specific instruction by supervisors is an effective substitute for basic pesticide safety training. The Agency is convinced that pesticide handlers will be more willing to observe job specific safety instructions and to cooperate in hazard reduction provisions, such as using PPE, if they are informed of the reasons for such provisions. Therefore, this final rule retains the requirement for general pesticide safety training for all pesticide handlers.

Some respondents questioned where to find information required for the training program, especially regarding spill cleanup and chronic health effects.

EPA intends that the training programs for pesticide handlers stress basic principles of safe pesticide handling. Pesticide-specific information is required to be furnished to each handler before each handling task. EPA intended that the information on health effects should focus on types of possible health effects, such as acute and chronic effects, delayed effects, and sensitization (allergic effects), that may be associated with pesticide exposure, not on product-specific effects. Information in the training program

regarding pesticide spill cleanup would be limited to the generally accepted three-step procedure of containment, removal, and disposal. Information on how to dispose of a specific spilled material will not be included in the general training program. Any handler assigned to clean up a spill would need to have any information on the pesticide labeling regarding spill cleanup procedures, precautions, or requirements specific to that product. If no specific information is listed on the pesticide labeling, the employer has no requirement under this part to seek out additional spill-specific information or instructions.

The Agency is supportive of those who want to train handlers beyond the minimum requirements in part 170 and encourages such initiatives. EPA is developing a new regulation regarding the appropriate procedures for disposal of pesticides and pesticide containers. When the rule is promulgated, the information is expected to be incorporated into pesticide labeling and can be conveyed to the handler on a product-specific basis.

The handler also must be informed of any pesticide-specific warnings or information regarding any health effects listed on the labeling of the pesticide being handled.

One comment questioned the relevancy of environmental information in worker protection training. The Agency believes such training is relevant to worker protection. Many environmental concerns are applicable not only to the organisms in the environment, but also to workers and other persons who may be in that environment. Ground and surface water warnings, for example, are designed to protect not only aquatic organisms, but also workers and other persons who may be using the water for drinking, cooking, bathing, etc. The Agency notes that FIFRA defines "environment" as including "water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these."

A number of comments suggested that handlers receive instruction concerning the part 170 handler protection requirements so they can assist in protecting themselves and be aware of noncompliance. One comment said that the training should cover the anti-retaliation provisions of the regulation and employees' rights to file complaints.

EPA agrees with these comments and has added such a subsection to the training requirements.

In § 170.230, EPA has made some modifications to the content of the

training program in addition to those discussed above. The topics have been reordered, and some have been combined. Several subsections have been rewritten to improve their clarity. A subsection has been added requiring instruction in the recognition and avoidance of heat-related illness associated with the use of PPE.

The Agency's proposal to require a trainer to be a certified private or commercial applicator or to be designated by a State or Federal agency as a trainer of certified applicators received considerable attention.

Some comments objected to permitting certified applicators, especially private applicators, to run training programs. Being certified has no bearing on competency to train others in pesticide safety, they maintained, and this provision may lead to unqualified persons providing training. Comments also said that trainers should be required to attend a continuing education course on how to instruct pesticide handlers.

A number of comments requested that other people who meet EPA requirements be permitted to run training programs for handlers or that the trainer should not be required to be a certified applicator. They pointed out that many agricultural professionals could do such training, such as county cooperative extension agents, university professors, consultants, and properly trained supervisory personnel.

Several respondents stated that a trainer was not necessary at all; employees handling pesticides could be given written information on pesticides to meet training requirements, if the handler is able to read. Another comment said that States should determine how training will be done.

The Agency continues to believe that the physical presence of a person to run the program and to respond to the questions of participants is critical to the success of the training. EPA will require the presence of a trainer since many of those needing training may have little formal education and may not be able to read and comprehend written materials without help. The Agency is aware that some States have developed successful training programs for certified applicators that do not require the presence of a trainer. EPA will allow States to adopt training programs that are more comprehensive than the Federal program. If any State wishes to establish an autotutorial program accompanied by some measurement of understanding, EPA will review the program to determine whether it is as



comprehensive as the program required by this regulation.

After considering these comments, the Agency has decided that the most relevant trainer qualification is previous training in pesticide use and safety. Certified applicators, whether private or commercial, would have some knowledge and experience in pesticide handling; with the assistance of written and audiovisual materials they should be able to respond to most questions on this topic. The Agency believes that most agricultural establishments either employ a certified applicator or contract for the services of a certified applicator in the course of business. Therefore, the Agency does not expect that a large number of people will need to obtain certification to act as trainers under this part. The Agency also does not envision or promote the idea that agricultural employers will use the certification system as an alternative to this handler training requirement.

A person designated as a qualified trainer of certified applicators or pesticide handlers by a State, Tribal, or Federal agency having jurisdiction is eligible to be a trainer under part 170. EPA is also persuaded by the comments that stated that a trainer could be a person who has completed a train-the-trainer or continuing education course. In the final rule, the Agency has modified the trainer qualification requirement to specify that a person who has completed a pesticide safety train-the-trainer course is eligible to be a trainer of handlers under this part.

EPA did not propose to require verification of training, because it was concerned that this could be considered a requirement for private certified applicator recordkeeping—a requirement specifically prohibited by FIFRA section 11.

Some comments expressed the view that section 11 of FIFRA prohibits the Agency from issuing regulations requiring recordkeeping by private applicators.

A number of comments urged some type of training verification with mandatory recordkeeping. Some suggested cards be issued to trained handlers; others suggested that the trainer be required to maintain records of training program participants. Many comments were concerned about the lack of recordkeeping requirements. They stated that without verification of training, violations will occur, enforcement will be difficult, and employees will be trained more than once.

Some comments argued that requirements to keep records of worker training would not be prohibited by

FIFRA section 11, claiming that a requirement for persons acting as trainers to keep records of trainees would not be the imposition of a recordkeeping requirement on a private applicator who voluntarily chose to act as a trainer.

Several comments suggested eliminating private applicators as trainers since they cannot be required to keep records and suggested that only certified commercial applicators should be eligible to conduct this training because they could be required to keep records.

EPA did not propose recordkeeping requirements in the proposed rule because of possible concerns that such recordkeeping might be inconsistent with section 11 of FIFRA. The Agency has concluded that section 11 does not prohibit the Agency from requiring trainers, including trainers who happen to be private applicators, to keep records verifying any training they give under part 170. Because the Agency did not propose a recordkeeping requirement for trainers in the proposed rule, however, EPA is not adopting any such requirements in the final rule. If experience under the final rule indicates that recordkeeping would be warranted, EPA will revisit this issue.

Although the training provision may be difficult to enforce in some cases without written verification, the Agency will seek enforcement of the provision and expects that the compliance rate will be high enough that significant risk reduction will be accomplished.

In their comments on the draft final rule, under FIFRA section 25(a), USDA expressed concern about the absence of a formal mechanism to avoid repetitive training of each new hire on each agricultural establishment and welcomed the opportunity to work with EPA to develop such a verification program. A change to the rule was made. The rule now states that if the handler employer determines that a handler possesses an EPA-approved WPS training certificate and has no reason to believe it is invalid, that determination shall meet the requirements of assuring that the handler has been trained. The revised final rule requires trainers to assure that appropriate Worker Protection Standard training has been given to a handler before the training certificate is issued. As described under the section about worker training, EPA and USDA intend to establish a joint task force to develop and implement a mechanism for verification of training. The task force would seek to reduce the amount of duplication in training and to establish a voluntary system of training verification.

The use of an EPA-approved WPS training certificate is optional. The Agency encourages those trainers who, voluntarily, would like to maintain records or issue cards to handlers to do so.

Some respondents misinterpreted the proposed rule's silence on the issue of frequency of handler training to indicate that retraining before each handling episode was necessary; others assumed that training was required either annually or upon initial employment each year.

Numerous comments raised questions such as when and how often training should be done. Some suggested it should be a one-time instruction conducted at the beginning of the growing season or at the time of employment; others wanted to see training required annually or more often.

The Agency did not specify in the NPRM how often pesticide safety training must be conducted. However, the final rule requires training for handlers to be renewed at least once every 5 years, measured from the end of the month in which the training is completed. The Agency believes that such renewal of WPS handler training will be adequate to convey the basic pesticide safety precepts to handlers and to provide timely updates and reinforcement, without undue burden. Mandatory annual retraining of the same employees presenting general information that typically does not change over the course of a year would be a burden on employers.

EPA intends to develop model training programs that will facilitate compliance with part 170. The Agency's plans in this respect are discussed in more detail in Unit VI of this preamble. Although the Agency expects that most pesticide safety training will be conducted using materials developed by EPA, it does not believe that this must be the only source of training materials. On the other hand, some assurance of the adequacy of privately developed materials is desirable. The final rule specifies the minimum content for such materials (§ 170.230).

#### *H. Knowledge of Labeling Information*

1. *Access to labeling.* The Agency proposed that any information from the labeling of any pesticide that is being used be provided upon request to the handler. This requirement was intended to provide handlers with product-specific pesticide safety information that will increase their ability to protect themselves and others.

Some comments stated that product-specific information is important but



that handlers may be too intimidated to request the information from the supervisor or employers.

Some comments suggested that the Agency delete the access-to-labeling provisions because the OSHA Hazard Communication Standard has been expanded to include agricultural employees. One recommended that the rule be changed to allow growers to retain either the pesticide label or the Material Safety Data Sheet (MSDS).

EPA has amended this section (§ 170.232) to address these concerns. Handlers must read or must be informed of, in a manner that they can understand, all labeling requirements related to the safe use of the pesticide such as signal words, human hazard precautions, PPE requirements, first aid instructions, and any additional precautions relating to the handling activity. In addition, the handler must have access to the labeling at all times during the handling activity in case a question arises about the use requirements. This does not mean that multiple copies must be made and carried with each handler, but that the product container itself or a copy of the labeling must be available in a place where it may be consulted if necessary.

The Agency believes that almost all respondents supported its intended goal, which was to assure that all handlers, including those working in an assisting or nonsupervisory capacity, are aware of the product-specific instructions for the pesticide being handled. If handlers are not aware of labeling requirements, it is more likely the product will not be used in accordance with labeling, a violation of FIFRA. In this regard, a MSDS is not an adequate substitute for product labeling. Although an MSDS may contain useful information about the safe handling and storage of the material and the risks associated with exposure to the material, it will not address all the enforceable use requirements on the pesticide labeling. The Agency considers that giving instructions in the relevant labeling requirements would assure this awareness and that reading the labeling also would be adequate. EPA agrees that handlers may be intimidated from requesting the labeling, and that even if a request is made, the labeling may not be read or understood.

**2. Labeling information for early-entry workers.** The Agency did not propose that early-entry workers have access to labeling information.

Some comments noted that early-entry workers would need product-specific information to have knowledge of the specific hazards associated with their early-entry assignment and that it

would be appropriate for early entry workers to have access to the labeling.

EPA agrees that it is essential for workers who enter a treated area before the expiration of an REI to have job and product-specific instructions in pesticide safety. Therefore, the Agency has added language under the entry restrictions in the subpart on agricultural workers. This language provides that before being allowed to enter a treated area during the REI, the workers either must read the product labeling or must be informed in a manner that they can understand of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, PPE specified for early-entry, and any other labeling requirements related to safe use.

**3. Product-specific information for workers.** The Agency proposed to require that product-specific information be provided to workers, on request, for all treated areas subject to notification, beginning on the day the pesticide is to be applied and continuing at least until the expiration of the REI. The required information included: (1) The specific location and description of the area treated or to be treated, (2) the brand name, active ingredients, and EPA registration number of the pesticide used, and (3) the restricted-entry interval. In the NPRM, the Agency stated that it considered requiring this information to be displayed at a central location, such as a notice board, or to be written on warning signs.

Few comments were opposed to providing this information. Most were critical of the requirement as written, however, and recommended posting the information at a central location. Numerous comments were opposed to any requirement that compels workers to request information, because workers are too intimidated to request information from the employer, fearing that such a request could jeopardize their jobs.

The Agency is convinced that workers must have unhampered access to product-specific information about the pesticides to which they are exposed occupationally. The Agency was persuaded by the comments that some agricultural workers may be intimidated and that oral communication of this information may be complex and inconvenient. The Agency has amended this section to require employers to list the product-specific information in a central place on the agricultural establishment and to allow workers unimpeded access to this information. The information must include: (1) The location and description of the treated area, (2) the product name, (3) the EPA registration number, (4) the active

ingredient(s) of the pesticide, (5) the time and date the pesticide was applied, and (6) the REI for the pesticide.

While the Agency acknowledges the similarity between this requirement and requirements of OSHA's Hazard Communication Standard, EPA will not require that an MSDS or similar fact sheet be made available, because such a requirement was not proposed in the NPRM. EPA and OSHA are committed to cooperating, within the constraints of their respective statutes, to minimize confusion and to avoid duplication of the requirements of the two agencies.

EPA has prepared a notice of proposed rulemaking to amend the WPS that requests comments on the feasibility and utility of requiring that MSDSs or fact sheets be made available to agricultural employees. This NPRM is being published in this issue of the Federal Register.

#### *I. Other*

**1. Cholinesterase monitoring.** EPA proposed that commercial pesticide handlers exposed to toxicity category I or II organophosphate pesticides for 3 consecutive days or for any 6 days in a 21-day period be monitored for cholinesterase inhibition. The Agency solicited and received comments on: (1) The types of employees to be monitored and, in particular, whether the requirement should be extended to private handlers, (2) the length of exposure (whether a more sensitive "trigger" with fewer days exposure would be more appropriate), and (3) the difficulties, costs, and advantages of day-based and symptom-based triggers.

Although some comments stated that only commercial handlers had sufficient exposure to warrant monitoring, many comments stated that private pesticide handlers also may have sufficient exposures to warrant cholinesterase monitoring and that this requirement should apply to all handlers. Some comments stated that applying the requirement only to commercial handlers creates a double standard for protection that is not supportable. Several comments supported the inclusion of all agricultural employees in a medical monitoring requirement because the cholinesterase monitoring requirement of the proposal afforded no protection for early-entry workers or other workers. Other comments stated that a medical monitoring program for all employees would be unnecessary and impractical.

A few comments stated that cholinesterase monitoring was unnecessary because of all the other requirements being initiated with part



170. Some suggested that cholinesterase monitoring be an option rather than a requirement; voluntarily implemented programs probably would be more successful than imposed programs.

Most respondents supported the Agency's proposed "trigger" of 3 consecutive days or any 6 days of exposure in a 21-day period. Some, however, stated that while a day-based trigger may be of use in detecting adverse health effects over time, it is of limited use in addressing accident situations or brief overexposure; a symptom-based trigger is too ill defined for use as a regulatory tool and could be confusing to both the employer and the supervising physician as to its applicability. One comment stated that a trigger based on hours (rather than days) of exposure would be a more rational way of including the highly exposed. Some comments suggested alternative triggers. A few reviewers stated that the Agency had given no rationale for the trigger chosen and asked how it had been determined. One suggested that determining the ideal trigger would have to wait until more data were available. Some comments suggested eliminating a trigger and requiring the testing on a preset schedule.

Many comments, both those for and those against a cholinesterase monitoring requirement, expressed concern about the recordkeeping that would be necessary to implement a monitoring program and to follow migratory and seasonal workers.

Some comments opposed monitoring because of the cost. Two comments included estimates that monitoring would cost \$70 per test or \$200 to \$400 per employee over the growing season, exclusive of the costs of recordkeeping and additional physician fees. Others noted that lost work time and cost of transporting handlers to a physician's office where the test could be performed would be a burden to employers. In some remote rural areas, the testing would necessitate long-distance travel to the nearest qualified physician. One comment warned that the expense of the test and the time off work probably would result in this regulation being ignored. In contrast, another comment stated that the reduced medical disability costs among handlers would easily outweigh the costs of implementing a monitoring program.

Numerous comments expressed concerns regarding the validity and the reliability of cholinesterase testing methods, the availability of qualified laboratories to support a cholinesterase monitoring program, and the sufficiency of most physicians' knowledge about the

toxicity of pesticides and ability to interpret the results of cholinesterase tests properly.

The Agency is concerned about many of the problems of cholinesterase monitoring, including the difficulty in finding knowledgeable physicians to set up monitoring programs and qualified laboratories to perform the analyses. The comments noted that a quality control program for laboratories would be needed nationwide if a monitoring program were to be successful. EPA is not prepared to establish such a program nationwide at this time.

The Agency believes that despite the practical difficulties associated with a nationwide program, the monitoring of employee exposure is a prudent occupational health practice and encourages employers wishing to operate such programs. To facilitate voluntary programs, the Agency has required that pesticides that contain cholinesterase-inhibiting compounds be identified as such in the labeling of the product. The Agency also is interested in cooperating in research or evaluations that might be done on new or existing exposure monitoring programs.

The Agency is concerned, however, that even reliable blood-level cholinesterase monitoring often would not prevent pesticide poisoning incidents. Blood samples are taken at intervals—weekly, biweekly, or monthly—during the exposure season; the handler may accumulate enough exposure between samples to become ill. In addition, the delay between sampling and the evaluation of the test results is such that most handlers will receive more exposure before the test results are known. Before such a monitoring system can indicate that handlers should be removed from further exposure to cholinesterase-inhibiting pesticides because their blood cholinesterase levels are dangerously low, the handlers may have received enough additional exposure to precipitate acute poisoning.

EPA is troubled by the reactive nature of available cholinesterase monitoring methods. The Agency would prefer to explore methods of monitoring exposures to cholinesterase-inhibiting pesticides, and perhaps to other pesticides, which are more likely to be preventive. One promising approach involves immunoassay-based detection. Immunoassay techniques could provide rapid, simple, and cost-effective monitoring methods for exposure monitoring systems under field conditions. It is expected that inexpensive kits can be developed that will yield quantitative results in less

than 30 minutes, thus enabling more frequent monitoring and rapid response if unacceptable exposure is indicated. This technology could provide an effective means of signaling to the pesticide handler when exposure is unacceptably high.

EPA has determined that more research is required to develop immunoassay monitoring systems for pesticide handlers. However, the research data to date indicate that an immunoassay-based personal monitoring exposure system probably could be developed. Immunoassay devices use antibodies as receptors to sample the environment of the exposed persons. Specific antibodies to many pesticides of concern already have been developed and evaluated, but specific antibodies for other priority compounds need to be identified. Ideally, a sampling system would be developed to incorporate all of the compounds of concern. The Agency strongly encourages the rapid development of practical and reliable techniques of this kind and welcomes further information on ongoing research and the opportunity to cooperate with developers on the necessary research. To support the goal of improving exposure monitoring technology, the Agency also intends to consider requiring the development of such detection methods for the registration or continued registration of selected pesticides.

In conclusion, although a blood-level cholinesterase monitoring program may be prudent for some handlers, EPA has determined that imposing a nationwide requirement for such monitoring is not justified at this time. The Agency is not convinced that such a program would provide benefits commensurate with the costs entailed. The Agency intends to pursue the development of more effective exposure monitoring systems, such as the immunoassay-based system discussed above.

EPA intends to reconsider the need for and the appropriate form of exposure monitoring for pesticide handlers after this final Worker Protection Standard has been implemented. This will give the Agency the opportunity to evaluate more thoroughly the ongoing research in this area and the results of new or existing exposure monitoring programs. The Agency expects to issue a proposed rule in this area in about 3 years.

2. *Relationship between OSHA's Hazard Communication Standard and EPA's Worker Protection Standard.* The proposed revisions to the Worker Protection Standard (WPS) were published July 8, 1988; the following month, August 8, 1988, the Occupational



Safety and Health Administration (OSHA) published a notice of proposed rulemaking which would modify its Hazard Communication Standard (HCS). In the preamble to these proposed modifications, OSHA states that the HCS would apply to workers who are exposed to pesticide residues after application.

EPA received numerous comments that pointed to the potential overlap of some requirements of the WPS with those of the HCS. Those who wrote were concerned that the requirements of the two standards might duplicate each other or might be conflicting. A few were concerned about possible conflicts with similar State laws. All want to see EPA and OSHA resolve any potential conflict before their respective regulations are made final.

Some respondents felt that OSHA should have responsibility for defining hazard communication in agriculture; more felt that EPA should have the responsibility where pesticides are used. Some asked that the access-to-labeling provisions of the WPS be deleted because of the OSHA regulation calling for access to MSDSs.

Some growers claimed they should be exempt from the WPS because they are covered by OSHA. Worker representatives want EPA to require training for all workers, as the HCS does.

EPA has made a commitment to work with OSHA within the constraints of each Agency's statutes to minimize confusion and to avoid duplication between the requirements of each Agency. Section 4(b)(1) of the Occupational Safety and Health Act precludes OSHA from regulating working conditions or hazards with respect to which other Federal agencies exercise statutory authority to prescribe or to enforce standards or regulations affecting occupational safety or health (29 U.S.C. 653(4)(b)(1)). In part 170, however, EPA has exercised statutory authority only with regard to agricultural working conditions or hazards that are related to pesticides. The Occupational Safety and Health Act and its regulations may apply to other agricultural working conditions or hazards and to nonagricultural working conditions (e.g., office work) that may take place on agricultural establishments. Among the regulations that may be applicable to nonpesticide working conditions in agriculture are the Hazard Communication Standard (29 CFR 1928.21) and the Field Sanitation Standard (29 CFR 1928.110). Since the OSHA Field Sanitation Standard addresses general sanitary hazards, rather than pesticide hazards, EPA

believes its applicability is not affected by part 170.

#### IV. Labeling Statements

##### A. Background of Proposal

The Agency noted in the NPRM that for part 170 to be enforceable under the misuse provision of FIFRA section 12(a)(2)(G), its requirements must be incorporated onto pesticide labels or labeling. Rather than require that the regulations be printed in their entirety on each product, EPA proposed that part 170 be incorporated by means of a reference statement. In addition to the reference statement, those requirements of part 170 that were product specific, such as personal protective equipment and restricted-entry intervals, and product-specific information necessary for compliance with part 170, such as whether the product is a fumigant, would appear as statements on labeling. Requirements applicable to all products, such as providing decontamination water, would not appear as statements on labeling.

The NPRM proposed that the required worker protection labeling statements be consolidated for the convenience of registrants in a new subpart K of part 156, "Labeling Requirements for Pesticides and Devices." The Agency proposed specific regulatory text and labeling statements for part 156, and solicited comment on the labeling aspects of the Worker Protection Standard. The Agency also discussed how it would implement these labeling changes as part of its pesticide registration program.

##### B. Reference Statement

The comments were divided evenly in opposing or supporting the proposal to reference part 170 on the label rather than including the full text of all requirements in labeling. Comments that opposed the proposal to reference part 170 gave reasons such as: (1) The problem of availability of the specific requirements of the regulation should it not be incorporated in pesticide labeling in its entirety, (2) the need for information at the use site, and (3) the undermining of the "read the label" and the "label is the law" message that users have been trained to follow. They suggested that noncompliance is more likely for requirements that are not on the label. Several comments stressed the need for wide dissemination of the requisite information. Two comments suggested that users should not be referred to part 170 but to Agency-generated guides, instructional materials, or popularized versions of the regulations.

The Agency acknowledges the need for pesticide users to have access to full information about the legal requirements for use of a pesticide. It also notes that in many cases the quantity of information on pesticide labeling is considerable. Confusion in understanding labeling statements may result in noncompliance as surely as difficulty in obtaining the information may result in noncompliance. The Agency intends to develop and to make available, through its outreach activities and with the assistance of the Cooperative Extension Service, State pesticide-regulating agencies, and the traditional networks of communication with the agricultural community such as commodity organizations and industry associations, information to assist users in understanding and complying with part 170. EPA believes that such information will minimize the need for users to seek out the Code of Federal Regulations (CFR) to understand their duties. The Agency intends to complete the development of basic training materials prior to implementing part 170. The Agency considered requiring registrants to distribute a copy of part 170 with each sale of agricultural pesticides, but concluded that such requirement would result in waste through duplication. However, the Agency encourages any efforts registrants choose to make to communicate part 170 requirements to users. The Agency has retained its approach in the final rule of referencing part 170 on the label, but has changed the language in the reference statement for the purposes of brevity and clarity.

##### C. Other Statements

Other changes have been made to part 156 in response to comments. The proposed wording of the labeling statements for restricted-entry intervals, notification, and personal protective equipment have been shortened.

One comment suggested that the signal word be required to appear in Spanish for products in toxicity categories III and IV as well as on products in toxicity categories I and II.

The Agency believes that for the most toxic products, where there is a significant risk of serious injury by accidental exposure, it is reasonable to require translation of a limited amount of critical information, such as the signal word, into Spanish because it is the primary language for many agricultural workers in the United States. Extending this translation requirement to additional products, information, or languages would add verbiage to already crowded product labels without



increasing the likelihood of avoiding additional pesticide poisonings. EPA permits a product to bear labeling in languages other than English, but it will not require translation as part of the final rule.

A number of changes to worker protection statements have been made in the final rule in response to comments. These changes have focused on risk mitigation measures such as the entry restrictions, notification about treated areas, and use of personal protective equipment by handlers and other workers entering treated areas prior to the expiration of a restricted-entry interval. The restricted-entry statements are to be placed in the "Directions For Use" section of the pesticide labeling under the subheading of "Agricultural Use Requirements" to consolidate most worker protection statements in one place.

No comments were received in reference to the proposed notification statements. Several changes to the notification section have been made in the final rule. The wording of the statement was changed to "notify workers of the application by warning them orally and posting warning signs at entrances to treated areas" rather than merely "subject to posting" to distinguish the statement from other general requirements of part 170 which involve the display of written materials. The subsection related to location of the statement on the labeling has been modified to require that the notification requirement be in the Agricultural Use Requirements section of the labeling with the other required worker protection statements.

No comments were received on the proposed personal protective equipment statements. In the final rule the Agency has made a number of administrative and technical changes to these sections. These are reflected in changes in the terminology used in the table for the protective equipment requirements for handling activities in 40 CFR 156.212(e). For example, the term "coveralls" has been used instead of "protective suit" and "protective eyewear" has been used instead of "goggles or face shield."

Two differences between the proposed and the final rule relate to PPE labeling statements. Wherever possible throughout the PPE section, the Agency has taken the approach of specifying the exact wording of PPE labeling statements and specifying which products are subject to the statement. The goals of this approach are to reduce the burden on registrants in interpreting part 156 in the process of revising product labeling and to reduce the need

for registrants to consult with EPA about PPE labeling language.

Another difference between the proposed and the final rule is the way in which information about acceptable types of PPE is conveyed to users. Specific types of glove materials will be recommended on the labeling, and specific types of respirators will be required on the pesticide labeling. Where protection of a certain body area is called for, e.g., eye protection, the labeling will not list all acceptable kinds of protective eyewear. Instead, the labeling statement will list "protective eyewear," and users will refer to the standardized definition of acceptable kinds of PPE for eye protection in 40 CFR 170.240 (the section of the pesticide-handling subpart which covers PPE), in the EPA-prepared guidance brochure on protective eyewear, or in other new EPA training materials dealing with PPE. Through these definitions and through handler training programs, users should become accustomed to the criteria for acceptable types of PPE, and EPA believes this will reduce labeling verbiage related to PPE.

EPA has made every effort to minimize the additional labeling language necessitated by the revisions to part 170 and to eliminate excess verbiage. At the same time, EPA recognizes that use restrictions can ordinarily be enforced only through labeling statements. EPA's approach, therefore, has been to put users on notice, via the labeling, of the regulations with which they must comply.

One comment suggested requiring the identification of the toxicity category on product labels. Signal words are intended to convey the relative acute toxicity of products in a manner users can understand easily. Since users may not be aware of the criteria on which toxicity categories are based, the Agency believes that the toxicity category would not be useful on labeling and that the signal word is sufficient.

In the final rule, EPA has specified the location, or alternative locations, for all required statements. The final rule allows that statements be consolidated, to the extent possible, for the convenience of the reader and that statements be at the beginning of the directions for use to emphasize their importance.

## V. Statutory Review

### A. U.S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this final rule was provided to the Secretary of Agriculture on June 7,

1991. On March 27, 1992, the Secretary provided written comments on this final rule. The Secretary offered many comments that led EPA to revise the final rule, its cost estimates, and its approach to implementation of the final rule. Following is a summary of the principal comments by the Secretary, together with the Agency's responses. The full texts of the Secretary's comments and EPA's responses are contained in the docket for this rule.

**Comment #1: USDA expressed concern about the impact of restricted-entry intervals (REIs) that exceed 72 hours.**

**Response:** USDA's concern is due to two aspects of the draft final rule: (a) A requirement that registrants must retain existing REIs that are longer than those that would be established through the Worker Protection Standard, and (b) a redefinition of "restricted-entry interval" — instead of allowing early entry if minimal protective clothing is worn, the rule now prohibits all early entry to perform hand labor tasks, except for a few narrow exceptions. Therefore, this rule might subject users to considerable costs that were not contemplated when these longer REIs were set. EPA believes that USDA has a valid concern regarding longer REIs established before the promulgation of this rule.

EPA has ascertained that REIs exceed 72 hours for only a few currently registered active ingredients—usually for only a few uses of each. EPA is reviewing such uses for each of the few active ingredients in light of current information. The review is based on the availability of reentry data, poisoning incidents, or other evidence that could help determine: (a) Whether routine early entry to perform hand labor tasks must be prohibited for the entire REI to mitigate risk to hand laborers, or (b) whether early entry for hand laborers with personal protective equipment (PPE) and other protections could be permitted on pesticide labeling as an appropriate temporary mechanism to respond to USDA's concerns about disruptions and costs to growers who are using pesticides with REIs longer than 72 hours, or (c) whether another product-specific strategy should be adopted.

EPA will notify registrants of this review process and will request that registrants notify EPA of longer REIs that may have been overlooked in the Agency's search. With cooperation from affected registrants, EPA expects to complete the review process in time for those registrants to alter their labeling within the time allotted in this rule.



Comment #2: Activities that entail only slight contact with treated surfaces should be subject to a reduced standard, and provision should be made to permit necessary agricultural worker activities with the use of PPE, particularly when REIs exceed 72 hours.

Response: The final rule contains an exception that allows early entry for activities that involve no contact with anything that has been treated with the pesticide to which the REI applies, including, but not limited to, soil, water, air, or surfaces of plants in the treated area. However, when contact with treated surfaces will occur, EPA is unable to predict on a generic basis which activities, crops, and situations will involve only "slight" contact. This can be determined only through data review, usually as part of the registration or reregistration process. See preamble discussion in Unit III—establishing entry restrictions in the future.

During the formal comment period for this rulemaking, EPA received many comments from the cut flower and cut fern industry about the economic hardship that prohibiting routine hand labor during REIs would cause their industry. The Agency did not receive comments from other industries or commodity organizations that indicated that they would sustain such a hardship and the Agency has no information indicating that any crops or industries other than the cut flower and cut fern industry would be significantly affected by the entry restrictions imposed by this final rule. However, there may be other industries, crops, or crop practices that would bear an unreasonable economic burden under such restrictions. Therefore, the final rule allows the Agency to grant exceptions to the entry restrictions on a case-by-case basis.

Comment #3: USDA believes it is imperative that EPA clarify whether the prohibition on early entry to perform hand labor tasks applies to State-established REIs.

Response: States determine the restrictions that apply to State-established REIs. The final rule's restrictions on entry apply solely to REIs that appear on federally approved pesticide product labeling. On some occasions, registrants request the addition of a State-established REI to their federally approved product labeling. If EPA approves such an addition, a decision will be made on a case-by-case basis as to whether to prohibit routine early entry to perform hand labor tasks during the entire State-established REI. EPA may choose to create an exception on individual product labeling to allow, after the

expiration of the EPA-mandated REI, early entry to perform routine hand labor tasks with certain limited PPE and work clothing.

Comment #4: USDA supports the concept of providing training to workers who may be exposed to potentially dangerous pesticides.

Response: None required.

Comment #5: USDA expressed concern that the manner in which training is required is unreasonably burdensome.

Response: USDA's concern is that if EPA requires training before each worker is potentially exposed, then training one or more times daily could be required of employers with frequent employee turnover, as is common in some hand labor crews. Such training might have to be conducted on the spot, such as at the side of the field, and would likely be less beneficial to the worker and onerous to the employer.

EPA will continue to require that early entry workers must be trained before entering areas and contacting treated surfaces while an REI is in effect, because their risks are expected to be higher. EPA has made a change, however, in the training requirement for non-early-entry workers. The modified rule continues to require training for all agricultural workers. However, in general, the modified rule requires agricultural employers to assure that when any worker enters any areas on the agricultural establishment where, within the last 30 days, a pesticide has been applied or an REI has been in effect, the worker receives pesticide safety training before their 6th day of entry into such treated areas on any particular agricultural establishment. However, for the first 5 years after the effective date of the rule, workers must be trained before their 16th day of entry into such treated areas on any particular agricultural establishment.

Finally, it should be noted that EPA deliberately established a relatively lengthy (about 20 months) lead time before the training provisions of the final rule would be enforceable. This lead time was established, in part, so that a substantial number of workers could be trained in the interim. Once a large percentage of workers have been trained, the concern about repetitive training diminishes, because many new hires already will have received training.

This issue does not pertain to handlers' for whom risks are expected to be higher—the rule requires that handlers receive training before they handle pesticides.

Comment #6: USDA expressed concern about the absence of a formal

mechanism to avoid repetitive training of each new hire on each agricultural establishment. USDA welcomes the opportunity to work with EPA to develop such a verification program.

Response: Two changes to the final rule were made. The rule now requires training for workers or handlers to be renewed at least once every 5 years. In addition, the rule now states that if the agricultural employer determines that a worker possesses an EPA-approved Worker Protection Standard training certificate that the employer has no reason to believe is invalid, that determination shall meet the requirements of assuring that the worker has been trained. The revised final rule requires trainers to assure that appropriate Worker Protection Standard training has been given to a worker before the training certificate is issued.

Comment #7: Additional funding will be required if EPA anticipates that USDA will meet some of the training requirements of this rule.

Response: EPA has not assumed that USDA will be the vehicle to meet the training requirements. The Agency believes that employers will train most workers and handlers. In addition, EPA will promote training by other interested persons and organizations by conducting train-the-trainer courses and by developing suitable training materials and making them available for trainers' use. However, EPA seeks to work closely with USDA in the development of Worker Protection Standard training materials, including materials designed to train workers and pesticide handlers and materials targeted at aiding growers in learning how to comply with the revised rule. EPA also seeks to cooperate with USDA in the development and implementation of the training verification system and other projects designed to inform the regulated audience about the revised rule and how to comply with it.

Comment #8: Making agricultural producers responsible for employees' own safety actions is unrealistic.

Response: While compliance is primarily a duty of employers under the final rule, enforcement officials have authority to consider the facts of the case before making a determination of whether a violation has occurred. The Agency agrees, for example, that it would be unfair for employers who expend considerable efforts to assure compliance to be treated in the same manner as less conscientious employers who tolerate or encourage noncompliance. However, the Agency believes that it is more appropriate not to intrude by regulation into this area.



Enforcement officials have traditionally based their compliance decisions on the facts of an individual case.

**Comment #9:** USDA questions the requirement that a listing of all pesticides applied must be displayed in a central location until 30 days after the REI has expired.

**Response:** The NPRM, which proposed that the information be provided to workers upon request, generated many comments. The majority of the commenters, including worker organizations, State agencies, and a land-grant university, recommended that the information be provided to workers through posting. The National Agricultural Chemicals Association recommended a requirement that the information be provided with each oral warning. Some commenters cited worker intimidation as the reason for opposing the proposal that information be supplied upon request. Others cited the potential difficulties that employers would have in complying with individual oral requests for such information. EPA was persuaded by the comments to require the posting of this information at a central place. On that basis, in turn, EPA was persuaded to drop the proposed daily oral warnings and require one-time oral warnings instead. EPA believes that most employers would find daily oral warnings more onerous than a one-time posting in a central location.

**Comment #10:** The rule needs to clarify when the employer is responsible for making available to the worker prompt transportation to an appropriate emergency facility. USDA interprets this to be applicable only while the employee is on the employer's property.

**Response:** EPA has clarified in the final rule that the agricultural employer must provide such transportation when a worker is on the employer's property, including in any labor camp located on the property. The Agency has similarly clarified in the final rule that the handler employer must provide emergency transportation when a handler is at the place of employment or at the handling site.

**Comment #11:** The decontamination provisions are unreasonably burdensome to employers because of the requirement for potable water for handwashing purposes.

**Response:** A change to the final rule was made. EPA replaced the requirement for potable water with a requirement for water that is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

Evidence indicates that the drinking water on many agricultural

establishments has not been tested for potability. EPA continues to require water of such quality that, if accidentally swallowed, would not cause illness or injury, because it is concerned that workers will accidentally use decontamination water for drinking purposes. In addition, the Agency recognizes that water used to wash the face may accidentally enter the mouth. EPA believes that this is a simple standard that will be easy for employers to understand and comply with.

**Comment #12:** The cost for eyeflush dispensers should be accounted for.

**Response:** USDA's comments on the cost analysis of eyeflush dispensers led, in part, to EPA's reexamination of the requirement. The language of the rule has been altered to change the requirement from "eyeflush dispenser" to "eyeflush water," and the requirements for decontamination water and eyeflush water have been combined in the rule to avoid confusion. In addition, the requirement for weekly replacement of nonsterile eyeflush water has been deleted and a performance standard has been added that requires employers to ensure that the decontamination and eyeflush water remains "of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed."

Eyeflush dispensers are no longer specifically required at decontamination sites; instead, eyeflush water is required. For example, eyeflush water may be the water in a carboy containing the decontamination water or may be running water from a tap. While special eyeflush dispensers may be used, any source of water that meets the standards for decontamination in the final rulemaking is acceptable for flushing the eyes. Eyeflush dispensers would be required only when handlers or early-entry workers must carry eyeflush water. This would occur only when handlers or early-entry workers are required by the pesticide labeling to wear protective eyewear and when they do not have decontamination water otherwise immediately accessible to them, such as running water nearby or a carboy on a vehicle they are using.

**Comment #13:** USDA questions whether it is reasonable to require decontamination facilities and training for a period of 30 days after the expiration of the REI.

**Response:** EPA reconsidered the 30-day time period due to comments from both USDA and Congress, and remains convinced that pesticide safety training and access to decontamination water are necessary for a considerable time after the REI expires. (Congress

requested a time period longer than 30 days.) The final rule continues to require that worker training and decontamination water be provided for 30 days after the expiration of the REI.

The 30-day period was an attempt to limit and better define the sometimes open-ended time period in the NPRM that was "any surface that has been treated with a pesticide during the agricultural crop production cycle in which the task occurs." (NPRM § 170.38(a)) In addition, it is important to note that this final rule is establishing minimum REIs. These REIs are intended as temporary safeguards until product-specific reviews are conducted. At that time, the Agency anticipates that longer REIs will be established on some of the products, based on restricted-entry-related incidents or on entry data.

On the other hand, even permanent product-specific REIs are based on "average" conditions. They do not and cannot take into account differences due to temperature and humidity; rainfall, dew, and irrigation practices; degree of sunlight; crop type, height, and density; region-specific production practices; or worker activity and length of exposure.

Evidence indicates the importance of washing pesticides off as soon as possible after an exposure to mitigate adverse effects. Retaining decontamination requirements for a period of 30 days after the expiration of an REI minimizes the chances that workers will be harmed by residues, decreases their chronic exposures to pesticides, and lessens the risk of delayed effects that may be unrecognized at present. Studies also indicate the value of training in any program to reduce risk and increase safety.

EPA has concluded that providing workers with pesticide safety training and supplying them with water, soap, and towels for routine washing for a period of 30 days after the expiration of an REI is a prudent and inexpensive measure to protect them from a variety of opportunities for exposure to pesticides.

**Comment #14:** EPA should establish regional climate-based restricted-entry intervals, and the need for decontamination provisions and safety training should be based on the pesticide persistence expected in a particular region.

**Response:** When EPA establishes product-specific REIs all available data for the product are considered. All such REIs must be set on a case-by-case basis, after detailed review of the properties and uses of the pesticide. Such a detailed review is not possible in



a regulation of the scope of the Worker Protection Standard. Part 170 establishes only "interim" REIs to strengthen deficient existing protections until a more thorough review can be performed.

As discussed in response to Comment #13, restricted-entry intervals will, for the most part, be based on "average" conditions. Even in the ideal situation, where entry is based on on-site field tests, situations will arise where workers will be exposed to unacceptable levels of residues. These situations include being contacted by drift from nearby applications, mistakes in warnings about areas not yet safe to enter, "hot spots" within treated areas from spills, or application mistakes, etc. In addition, the establishment of a residue level that is "safe" for entry involves, at this time, only an analysis of exposure to a specific product on a specific occasion, and is often based only upon acute toxicity data. The Agency is also concerned about acute and delayed health effect risks from the cumulative effect of multiple exposures to a single product and multiple exposures to multiple products. Since the opportunities for exposure are so variable, training employees once every 5 years and providing decontamination facilities for a period of 30 days after the restricted-entry interval seem to be prudent, low-cost measures that can reduce the pesticide-related illnesses and injuries that may stem from such exposures.

Comment #15: USDA takes exception to the term "decontamination facilities" after the expiration of the REI when the risk of pesticide exposure is negligible and suggests "personal hygiene facilities" or simply "handwashing facilities."

Response: EPA will continue to call the provision "decontamination facilities," because the term best describes the purpose of providing soap, towels, and water to pesticide handlers, early-entry workers, and agricultural workers working in areas that have recently been treated with pesticides. The Agency does not consider the risk of pesticide exposure to be negligible for these employees.

Comment #16: USDA is concerned that regulation beyond the harvest interval could be misinterpreted in a manner that would generate unwarranted food safety concerns.

Response: Preharvest intervals and entry restrictions are based on different criteria. Entry restrictions are based on the expected skin or eye exposure that workers might receive during an entire workday from exposure to residues on foliage, fruit, other plant parts, and in or

on the soil, water, or air. Preharvest intervals are based on the expected dietary intake of the edible portion of the crop based on amounts consumed. The Agency has concluded that field workers often will have a far greater opportunity for exposure than the consumers of the crop they pick. Finally, the uncertainties associated with any REI have already been discussed. This uncertainty has led EPA to require prudent, but economical, worker protections after the REI has expired.

Comment #17: In informal discussions between EPA and USDA about this final rule, USDA expressed concern about limiting the access of crop consultants and IPM scouts to treated areas immediately following pesticide applications and during REIs.

Response: EPA has changed the final rule to allow persons who are performing duties as crop advisors to have access to treated areas without a time limitation. A crop advisor is defined as any person who is assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks. EPA was unwilling to exempt crop advisors from all of the protections provided by this rule, but has defined them as pesticide handlers if they enter an area during a pesticide application or REI. As pesticide handlers, they must receive such protections as handler training (unless already certified applicators), PPE and the availability of decontamination facilities. However, since crop advisors who are employed by commercial establishments (rather than directly for the agricultural establishment) are not workers covered by part 170 protections, their presence in a treated area after the expiration of the REI will not trigger notification requirements, such as oral warnings, treated area posting, or posting of application-specific information, and the operator of the establishment need not supply them with decontamination sites. The Agency bases this change on its conclusion that crop advisors are likely to be particularly well-informed about pesticide risks and how to protect themselves.

Comment #18: USDA raised concerns about the Regulatory Impact Analysis.

Response: In light of USDA's concerns, EPA reexamined the Regulatory Impact Analysis for this final rule. The Agency used USDA-provided data and data from other sources to update and refine the analyses for the various requirements of the rule. The full text of EPA's responses to USDA's concerns is contained in the docket and

in EPA's revised Regulatory Impact Analysis for this rule.

#### B. Congressional Committees

As required by FIFRA section 25(a), a copy of this final rule was provided to the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate and the Committee on Agriculture of the U.S. House of Representatives. Comments were provided by Senator Patrick Leahy and Representative Charlie Rose. Following is a summary of each comment by Senator Leahy and Representative Rose, together with the Agency's response.

Comment #1: Supports covering greenhouse, nursery, and forestry workers.

Response: None required.

Comment #2: Supports prohibiting routine hand labor activities prior to the expiration of the applicable restricted-entry interval.

Response: None required.

Comment #3: Supports covering all farms regardless of size.

Response: None required.

Comment #4: Supports training for workers as well as handlers.

Response: None required.

Comment #5: All field workers should be given crop sheets.

Response: The Agency agrees that workers should have access to information about the hazards of the specific pesticides to which they may be exposed during their work activities. Crop sheets provide workers with hazard information for all the pesticides that may be applied to the crops they are working with. The Agency is establishing a system whereby information on the specific pesticide(s) actually used on a crop will be posted at a central location to which workers will have access. The Agency is also proposing to make MSDSs or comparable pesticide-specific fact sheets available to workers. The information posted at the central location, coupled with MSDS-type information, will allow workers to determine the hazards of the specific pesticides they may be exposed to during their work activities.

Comment #6: The training for workers and handlers should include information on the workers' rights and the growers' responsibilities.

Response: The Agency agrees that workers and handlers should be aware of the protections they are entitled to under the Worker Protection Standard. The Agency has incorporated such a provision into the training requirements for workers and handlers.



Comment #7: All worker and handler training should be ongoing and updated as needed.

Response: The Agency supports the concept of ongoing training and the updating of information as needed. A change to the final rule was made. The final rule now requires training for workers or handlers to be renewed at least once every 5 years, measured from the end of the month in which the training is completed. The Agency believes that such renewal of WPS training will be adequate to convey the basic pesticide safety precepts to handlers and to provide timely updates and reinforcement, without undue burden.

This final rule requires the continual presence of a pesticide safety poster to serve as ongoing reinforcement of training for workers and handlers on agricultural establishments. The final rule also requires employers to update as necessary the information about the location of the nearest emergency medical facility. In addition, updated information about specific pesticides to which the workers may be exposed will be provided to workers as specified under the notification provisions.

Comment #8: Supports establishing a minimum restricted-entry interval (REI) for all pesticides and setting REIs for toxicity category I and II pesticides without distinguishing those of a specific chemical class.

Response: None required.

Comment #9: In all dry areas, all toxicity category I pesticides should have a 72-hour restricted-entry interval.

Response: During the ongoing reregistration of pesticides, the Agency is requiring registrants to supply data about foliar and soil dissipation rates on products for which this information is relevant. When the Agency has the necessary data, it will establish product-specific REIs based on the product, and, as applicable, on the crops or sites where it is used, cultural practices, varying climatic conditions, and application techniques. At present, the Agency has data to indicate that some organophosphates transform into more toxic products in arid conditions. There are no data to indicate that other chemical classes of pesticides undergo similar transformations. Without data to support a longer REI for chemical families other than organophosphates, the Agency has extended the REI to 72 hours for organophosphate pesticides only. The transformation of organophosphates into more toxic products is related to the lack of moisture in the soil and conditions of very low humidity. These conditions are generally found only in areas where

rainfall is consistently below 25 inches a year. The Agency believes that defining arid-like conditions, such as a combination of percent humidity, days without measurable dew or rainfall, and percent soil moisture, is unsuitable for establishing these "interim" REIs.

Comment #10: Generic REIs should be established on the basis of the highest acute toxicity rating, whether dermal or oral. (Methomyl poisoning incidents in California cited as basis.)

Response: Studies of fieldworker exposures indicate that the predominant exposures in outdoor situations are to the skin and eyes. Except in those few situations where fieldworkers have eaten fruits or vegetables before the preharvest interval has expired, the Agency is unaware of validated fieldworker poisoning incidents where the primary route of exposure was oral. The worker training materials being developed by the Agency include specific warnings not to eat fruits and vegetables unless a supervisor indicates that it is safe to do so. In this final rule, the Agency intends to establish REIs based on three parameters: dermal toxicity, skin irritation potential, and eye irritation potential. If dermal toxicity data are unavailable, the oral toxicity data will be used. For example, under this strategy, methomyl would be assigned a 48-hour REI because it is a toxicity category I eye irritant.

With respect to the methomyl incidents cited by Congress, preliminary reports indicate that, under special environmental conditions, methomyl dissipation is not following the predicted pattern and rate. EPA will adjust REIs for methomyl to reflect these special environmental conditions, if there are indications that the incidents were not unique. The Agency is unaware of data or conclusions by experts that the oral LD<sub>50</sub> is a more accurate assessment of the actual hazard to workers than dermal LD<sub>50</sub>, either in these methomyl incidents or in other fieldworker poisoning incidents.

Comment #11: Continue protections for workers for a minimum of 60 days after the expiration of the restricted-entry interval.

Response: EPA reconsidered the 30-day time period due to comments from both USDA and Congress. The Agency has studied more recent data regarding the incidence of multiple-case systemic illnesses of agricultural field workers from exposure to residues of organophosphates in California. Among the 44 incidents for which data were provided, the mean length of time from application to poisoning was 20 days, with a median of 16 days. The range was from less than 1 day to 66 days,

although this latter figure was an outlier and did not appear to be well substantiated. Excluding parathion (no longer registered for most crops) and this outlier, the longest period between application and reentry poisoning was 39 days. The Agency believes that poisoning incidents that occur more than 30 days beyond the REI probably stem from a miscalculation in establishing the REI that is listed on the labeling. Therefore, EPA decided to continue to require that decontamination water be provided for 30 days after the expiration of the REI. See EPA's response to USDA's Comment #13 for a more complete discussion.

Comment #12: Moving or repair of irrigation equipment should be designated as a hand labor task, since workers performing such tasks are likely to come in contact with treated surfaces.

Response: EPA concurs that moving and repairing irrigation equipment may cause workers to contact treated surfaces. However, the Agency believes that this contact will be short-term and mostly nonsubstantial. The Agency realizes that moving, adjusting, or repairing irrigation equipment may be necessary while an area remains under a REI. The Agency has, however, placed strict limitations on early entry to perform such tasks. These include: (1) No entry for the first 4 hours after an application, (2) a limit of 1 hour per worker per day for performing such early entry tasks, (3) PPE provided, cleaned, and maintained for the workers, (4) special instructions provided, including information about the hazards of the pesticide(s) to which the workers will be exposed, and (5) special decontamination and change area provisions.

Comment #13: A responsible agency should determine whether or not an emergency actually exists before early entry due to an agricultural emergency is permitted.

Response: The Agency intends that early entry due to an agricultural emergency be an extremely rare circumstance. Therefore, this final rule requires two separate determinations that an emergency exists: (1) A responsible agency must declare that circumstances exist that might cause an agricultural emergency on an establishment. For example, a State, Tribal, or Federal agency having jurisdiction over the establishment would have to declare that a potentially crop-damaging drought, hail storm, high winds, hurricane, tornado, freeze, or frost has occurred (or is predicted to occur) in the area where the agricultural establishment is located. (2) In addition,



the agricultural employers must declare: (a) That they could not have anticipated the circumstances that led to the emergency when they applied the pesticide, (b) that they had no control over the circumstances that led to the emergency, (c) that no practices other than early entry will prevent or mitigate a substantial economic loss involving the crop in that treated area, and (d) that the loss of profit without early entry will be greater than that which would be expected on the basis of experience and the fluctuations of crop yields in previous years. EPA believes that these rigorous determinations will preclude widespread or improper use of the emergency provisions.

**Comment #14:** Strongly object to the exemption for cut flower and cut fern workers for early entry. Congress notes that California prohibits early entry for hand labor without apparent deleterious effect on the cut flower industry.

**Response:** A change to the final rule has been made. The Agency has adopted an exception process that would allow interested persons to demonstrate to the Agency that, in a particular industry, an exception should be granted to the general prohibition on routine early entry. Persons wishing to obtain an exception to the early-entry restrictions would submit a request for such an exception to the Agency. Comments that EPA has already received from the cut flower and cut fern industry have convinced EPA that this industry, at least, probably warrants such an exception. The decision that such an exception is probably warranted is based on a balancing of the risks and benefits that would result from such an exception (see proposed exception to rule published elsewhere in this issue of the *Federal Register*). However, the Agency is interested in a full range of comments and information on this proposed exception and has provided 30 days for interested parties to comment. The Agency particularly welcomes comments supported by information, such as evidence demonstrating whether the risks to workers would be acceptable, whether the use of personal protective equipment in these circumstances would be feasible, and whether there are feasible alternative practices that would make routine early entry unnecessary. The Agency also would welcome any additional information concerning the likely economic impact on this industry of a prohibition of routine hand labor tasks during the restricted-entry intervals.

While EPA has concluded that it would be difficult to ensure worker

safety during widespread and routine early entry, narrow exceptions, such as this one, can receive adequate management attention to help ensure compliance when such early entry is critical to a crop.

The Agency notes that although California law prohibits all early entry work involving hand labor, California does not currently impose REIs beyond "sprays have dried/dusts have settled" for many of the pesticides used by the cut flower and cut fern industry. In addition, California has established only a 24-hour REI for toxicity category I pesticides, with longer REIs for specific organophosphate and *N*-methyl carbamate pesticides. This final rule is establishing a minimum 12-hour REI for all pesticides plus a 24-hour REI for all toxicity category II (dermal and ocular routes) pesticides and a 48-hour REI for all toxicity category I (dermal and ocular routes) pesticides. Thus, while California prohibits early entry, its entry standards for this industry are generally less stringent than those of EPA's final rule. The economic impact of complying with EPA's REIs is likely to be higher than compliance with California's entry limitations, unless an exception is provided.

**Comment #15:** Urge a requirement for cholinesterase monitoring of all commercial and private pesticide handlers who may handle organophosphate or *N*-methyl carbamate pesticides.

**Response:** The Agency believes that monitoring of employee exposure is a prudent occupational health practice. However, as explained in the preamble (Unit III.I), EPA is concerned about many of the problems of cholinesterase monitoring.

EPA intends to reconsider the need for and the appropriate form of exposure monitoring for pesticide handlers after this final rule is implemented. This will give the Agency the opportunity to evaluate more thoroughly the ongoing research in this area and the results of new or existing exposure monitoring programs. The Agency expects to issue a proposed rule in this area in about 3 years.

**Comment #16:** Cholinesterase testing of field workers should be required in poisoning incidents involving organophosphate or *N*-methyl carbamate pesticides.

**Response:** EPA presumes that treating medical personnel would prescribe such testing when appropriate and that prudent employers would encourage such diagnostic tests. However, the focus of this rule is prevention of poisoning incidents for persons

occupationally exposed to agricultural pesticides. It does not address diagnosis or treatment of pesticide illnesses or injuries. Diagnostic testing was not proposed in the NPRM and the Agency deems such a requirement beyond the scope of this rule.

**Comment #17:** Supports evacuation of greenhouse workers during fumigation application and restricted-entry periods.

**Response:** None required.

**Comment #18:** Supports mandatory posting of treated areas in greenhouses.

**Response:** None required.

**Comment #19:** Unrealistic to expect that unprotected workers could reenter treated areas in greenhouses and nurseries without exposure to pesticide-treated surfaces.

**Response:** The Agency is convinced that there are situations in which workers may reenter many areas in nurseries and greenhouses without contacting treated surfaces, and has chosen to permit such entry. An example of such entry is when workers are wearing footwear and are walking through the aisles of treated areas where the plants or other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker. Under the final rule, worker entry into treated areas is prohibited when contact would take place.

**Comment #20:** Concerned about the adequacy of the ventilation and buffer zone criteria established for greenhouses and nurseries and urge further study of the effectiveness of the standards in practice.

**Response:** The Agency is interested in cooperating in research or evaluations that might be done on this aspect of the regulation and has held some preliminary discussions as to the best design of such a research project.

**Comment #21:** Not requiring notification for workers who are not expected to come within 1/4 mile of a treated area is inappropriate.

**Response:** EPA acknowledges that workers frequently are required to move throughout the field or nursery to accomplish their assigned tasks. This final rule requires employers to notify workers of any pesticide application on the establishment unless the employer makes sure that the worker will not be in the treated area and will not walk within 1/4 mile of the treated area. As a practical matter, if workers move throughout an establishment, their employer must notify them of all treated areas on the establishment remaining under an REI. The exception to the notification requirement is intended to be in effect only when pesticides are



applied at times when workers are not present on the property or when pesticides are applied to distant areas of the establishment where no work activities are occurring. Some farms, nurseries, and forests are vast or noncontiguous; requiring workers to be notified of areas greatly distant from their place of work would be pointless and counterproductive.

Comment #22: Concern about EPA's rejection of the skull and crossbones symbol for the restricted-entry sign.

Response: The Agency acknowledges that the skull and crossbones is a far more recognized symbol for "highly toxic" or "very poisonous" than any other pictorial representation. For precisely that reason, FIFRA requires the skull and crossbones symbol on the labels of pesticides that are highly toxic orally, dermally, or through inhalation. EPA prohibits the use of the skull and crossbones symbol on any other pesticide label. The Agency has consistently taught pesticide users that the skull and crossbones is the symbol for the most highly toxic pesticides, i.e. those where only a few drops by mouth could be fatal.

For this reason, the Agency is convinced that the skull and crossbones is not appropriate for notifying workers of areas remaining under an REI. While some of these areas may have been treated with highly toxic pesticides, other areas may have been treated with moderately or slightly toxic pesticides. Rather than diluting the impact of the skull and crossbones symbol, EPA has chosen to create a new symbol for restricted entry.

The Agency is taking several steps to assure recognition and acceptance of the new symbol: (1) The symbol is mandatory nationwide. States and industries currently using other signs and symbols must use the EPA-mandated sign. (2) Mandatory worker training programs must explain the symbol to workers. (3) The EPA-mandated pesticide safety poster will serve as a reminder to workers by depicting the restricted-entry sign and its meaning.

Comment #23: The implementation time frames are too long. All regulations should be mandatory within 8 months.

Response: Implementation and enforcement of the revised Rule depends on the misuse provision of FIFRA section 12(a)(2)(G) that states it is unlawful "to use any registered pesticide in a manner inconsistent with its labeling." Thus, the provisions of the Worker Protection Standard must be in the labeling or must be linked to pesticide product labeling as directions for use before they can be implemented

or enforced. Although the Agency strongly believes that the protective measures of this final rule should become effective as soon as practicable, it has concluded that a phased and orderly schedule of relabeling, information dissemination and training, and enforcement is needed to facilitate both registrant compliance with the new labeling requirements and user understanding and compliance with the worker protection standard.

Therefore, the Agency will require that no revised labels appear in the marketplace for approximately the first 8 months after promulgation so the Agency will have an opportunity to explain the requirements to users. Thereafter, product-specific requirements will be enforceable when they appear on labeling. Twenty months is the latest time that labeling may be revised by the registrants. EPA expects many labeling revisions will occur earlier than the 20-month deadline.

Comment #24: The regulatory protections ignore chronic health risks.

Response: The Agency is concerned about minimizing both acute and chronic health risks. Several provisions of this final rule are designed, at least in part, to reduce chronic health risks. These include: (1) Incorporating information about chronic risks and how to avoid them into the mandatory worker and handler training programs, (2) providing decontamination sites for 30 days beyond the expiration of the REI, (3) establishing a minimum REI of 12 hours for all pesticides, and (4) establishing for all handlers and early-entry workers minimum PPE and work clothing requirements designed to minimize dermal exposure to all pesticides, regardless of their acute toxicity. EPA believes that these protections against acute risks, if adhered to consistently over time, will protect against chronic risks as well, by reducing exposures that may give rise to chronic effects. On the other hand, the Agency has concluded that more stringent pesticide-specific protections (such as REIs or PPE) based on chronic health risks should more appropriately be set after case-by-case review.

Comment #25: No buffer zones are required to protect workers in the field from drift.

Response: The Agency recognizes that drift from nearby applications is a common cause of exposure for agricultural workers. This final rule specifically requires that both the pesticide handler and the handler's employer must make sure that the pesticide is not applied so as to contact, either directly or through drift, any worker or other person, other than an

appropriately trained and equipped handler. EPA considers this protection so crucial that it is the one situation where a generic requirement from the Standard is listed on each pesticide product label.

Comment #26: Toxicological concerns about inert ingredients are ignored.

Response: The Agency is concerned about minimizing risks to workers and handlers of any chemicals of toxicological concern, whether they are active or inert ingredients. In establishing PPE requirements for handlers and early-entry workers in the final rule, the Agency considers the toxicity of the formulated pesticide product. The toxicity of the formulated product encompasses the toxicological characteristics of both the active ingredient(s) and the inert ingredient(s).

In establishing REIs, however, the Agency has determined that the properties of the active ingredient(s) are the main toxicological concern. Many of the inert ingredients that might otherwise pose a toxicological hazard are volatile and will not remain on the treated surface beyond the first few hours. Similarly, EPA has chosen to consider only the toxicity of the active ingredient(s) in establishing REIs and in determining which products must contain a requirement for both oral warnings and treated area posting.

In a process separate from this rule, EPA is evaluating and, where appropriate, reducing the risks posed by inert ingredients. In addition, the Agency will evaluate the risks of all formulations, including their inert ingredients, during its accelerated reregistration program, now underway. The Agency has concluded that further attention to inert ingredients in the final rule is unnecessary.

#### C. FIFRA Scientific Advisory Panel

Pursuant to FIFRA section 25(d), a copy of this final rule was provided to the FIFRA Scientific Advisory Panel (SAP). The SAP waived review of the final rule.

#### VI. Implementation

##### A. Agency Implementation Strategy

1. *Phased implementation.* The Agency is establishing different implementation dates for the requirements in part 170 and the changes required in pesticide labeling found in part 156.

The first amended labeling under part 156 would be available to users no sooner than April 21, 1993. As pesticide products with amended labeling are used, EPA will begin to enforce the



provisions of part 170 that are related to the new specific requirements on pesticide product labeling for restricted-entry intervals, personal protective equipment, and notification about treated areas.

After April 21, 1994, all products covered by this rule must have amended labeling when they are distributed or sold by registrants.

After April 15, 1994, EPA will begin to enforce the remaining provisions of part 170.

Implementation and enforcement of the revised Worker Protection Standard depend upon the misuse provision of FIFRA section 12(a)(2)(G) that states it is unlawful "to use any registered pesticide in a manner inconsistent with its labeling." Thus, the provisions of this revised standard must be in the labeling or must be linked to pesticide product labeling by reference before they can be implemented or enforced.

Currently, changes in directions for use ordinarily are incorporated in their entirety into the labeling of each affected pesticide product.

Implementation and enforcement of new directions for use occur when a pesticide product with the changed labeling is used. The Agency has determined that implementation of the Worker Protection Standard through this mechanism would be difficult. Only worker protection requirements that vary from product to product will be placed on the pesticide product labeling as specific directions for use. Part 170 requirements that do not vary among affected products will not be repeated in each product's labeling; the Agency will reference these standards on pesticide product labeling.

Placing requirements related to the directions for use in documents that are referenced on the pesticide product labeling, but which do not accompany the product in commerce, is unusual. Although the Agency believes the protective measures of the revised part 170 should become effective as soon as possible, it has concluded that a phased and orderly schedule of relabeling, information dissemination, and enforcement is needed to facilitate both registrant compliance with the new labeling requirements and user understanding and compliance with the Worker Protection Standard.

The requirements of the revised Worker Protection Standard related to a product's potential hazard to users and other persons will be on the label or in the product labeling. A registrant of an affected pesticide product will be required to specify: (1) A prohibition from applying the pesticide in a manner that contacts anyone except

appropriately trained and equipped handlers, (2) PPE for handling and early-entry activities, (3) a restricted-entry interval, and (4) when appropriate, that workers be notified orally and by posting of signs at the treated areas.

Although the concepts of not applying pesticides when workers or other people may be contacted, of using PPE to handle pesticides, of restricting entry to treated areas, and of notification about pesticide-treated areas are familiar to agricultural pesticide users, this rulemaking modifies these requirements in significant ways. Since these product-specific provisions are essential to the safe use of a pesticide, the Agency is unwilling to delay their implementation. Consequently, all product-specific requirements will be effective as soon as they appear on pesticide product labeling. However, the Agency will require that no such labeling changes appear in the marketplace until there has been an opportunity to explain them to users.

Other new requirements apply to all pesticide products used in the production of agricultural plants. These include the requirements for training handlers and agricultural workers, for providing pesticide-specific information to employees, and for providing decontamination water and emergency assistance for handlers and workers. It is not practical to describe these requirements fully in the product labeling. Therefore, it will take time to communicate these requirements to the agricultural community and for that community to implement them. As a result, enforcement of the general requirements will be delayed as described below. (Unit VI.A.2.)

2. *Implementation of part 170.* EPA will implement part 170 in two phases:

a. *Accelerated implementation of provisions supporting product-specific labeling.* Specific requirements related to restricted-entry intervals and notification about treated areas are being added or changed through this revision of part 170.

To implement the requirements that will be found on some product labeling for restricted-entry intervals, and the instructions to both orally warn and post treated areas, sections of part 170 that concern these requirements and the exceptions to these requirements must be implemented quickly to prevent unintended burden on the user during the phase-in period of compliance with this regulation. The sections of part 170 that will have accelerated implementation, i.e. that will be enforced as the associated statements appear in pesticide labeling are:

i. *Sections of part 170 related to entry restriction.* Section 170.112(a)(1) through (a)(4) states the general restrictions on worker entry to treated areas prior to the expiration of an REI. Section 170.112(b) describes an exception to the general restrictions and permits entry if the worker will have no contact with anything that has been treated with the pesticide to which the REI applies. Sections 170.112(c)(1) through (3) describe the exemption for early entry to perform short-term tasks and describe the requirements for that exemption which will be implemented on an accelerated schedule. Sections 170.112(d)(1) through (2)(ii) plus 170.112(c)(3) that is referenced in (d)(2)(iii) describe the exemption for early entry due to an agricultural emergency and describe the requirements for that exemption which will be implemented on an accelerated schedule.

ii. *Sections of part 170 related to requirements about oral warnings and posting of treated areas.* Implementation of the requirements to both orally warn and post treated areas in the labeling requires implementation of § 170.120(a)(3) and (b)(3), which tell the employer the exceptions to the oral warning and treated-area posting requirements.

b. *Implementation of part 170 provisions that are generic to all pesticide uses.* The enforcement of the remaining or "generic" provisions (i.e. those that apply to all pesticides uses) in the final rule will begin April 15, 1994.

The phased implementation dates for part 170 are intended to allow time for EPA and cooperating organizations to develop, reproduce, and distribute the training and instructional materials necessary to encourage compliance. If part 170 implementation were to be triggered solely by the appearance of revised labeling, some users would have to comply with part 170 before instructional materials were available to assist them in doing so.

3. *Implementation of part 156.* The Agency is establishing two separate sale/distribution dates for registrants. The first date regulates the earliest date that a registrant is allowed to sell or distribute a pesticide product with labeling amended to include part 156 statements. This date is the effective date of part 170 (which is 60 days after publication of the final rule) plus 6 months. During this time the Agency will execute an implementation outreach program. The second date, 18 months after the effective date of part 170, is the time by which all affected pesticide products sold or distributed by



registrants would be required to contain the appropriate part 156 statements in their labeling.

In the past, EPA has not placed constraints on registrants as to how soon pesticide products bearing Agency-required changes to labeling could be sold or distributed; the emphasis has been on the maximum time registrants would be allowed for changing labeling. However, in the implementation of the Worker Protection Standard, registrants will not be allowed to sell or distribute pesticide products with labeling amended to include part 156 label-specific requirements or the generic part 170 reference statement prior to an established date. This constraint is to prevent pesticide labeling with the new worker protection statements pursuant to this final rule from becoming available to users before EPA and cooperating organizations can disseminate the information necessary to tell users how to comply with the requirements. Otherwise, users could face the dilemma of being required to comply with provisions without the necessary information on how to do so.

A summary of the implementation schedule is given in the following Table 1:

Table 1.—Implementation Time Table

Time	Part 156 Activities	Part 170 Activities
Publication in the Federal Register of part 170 and part 156 (notice to registrants of mandatory labeling changes).	Inform registrants of required label changes (LIP or PR notice).	Initiate outreach to regulated community to inform affected parties about the rule, particularly the accelerated provisions, i.e. the requirements in the labeling for restricted-entry intervals, treated area posting and oral notification to workers, and use of personal protective equipment.
60 days after publication.	Effective date.	Effective date, including the process for requesting exceptions to restricted-entry intervals.

Table 1.—Implementation Time Table—Continued

Time	Part 156 Activities	Part 170 Activities
6 months after effective date of part 156 and part 170.	Earliest date that products with amended labeling may be sold or distributed by registrants.	Start compliance efforts on new product-specific requirements on labeling (accelerated provisions of part 170).
April 15, 1994.		Start enforcement of part 170 "generic" provisions whenever a pesticide product with amended labeling is used.
18 months after part 156 and part 170 effective date (12 months after earliest sale or distribution date for registrants).	All pesticide products sold or distributed by registrants must bear labeling referencing part 170 and other part 156 labeling statements.	
36 months after part 156 and part 170 effective date.	Pesticide products sold/distributed by any person must bear amended labeling.	

## B. Registrant Compliance

A large number of products will be affected by the new requirements, and an orderly relabeling process is necessary to avoid confusion, to ensure clear and appropriate labeling to guide users, and to facilitate registrant compliance. Thus, the Agency has included in this preamble instructions to registrants and compliance deadlines for changes to pesticide labeling required by the new subpart K, part 156 ("Worker Protection Statements"). The Agency has tried to make the new labeling requirements as self-explanatory as possible to reduce the need for registrant inquiries.

1. *Applicability of part 156, subpart K statements.* This section provides guidance to registrants in determining which of their products may be affected by the new part 156 subpart K, whether existing worker protection statements should be retained, and how new part 156 subpart K labeling statements should be determined.

a. *Scope.* Products affected by part 156 subpart K are, with some exceptions, those products registered for use in the production of agricultural plants (40 CFR 156.200(b)). The scope of agricultural pesticides for purposes of subpart K is broad and refers to any product registered for use in the production of agricultural plants on farms, or in forests, nurseries, or greenhouses; these terms are defined in 40 CFR 170.3. Part 156, subpart K applies to products that may be applied directly to agricultural plants or to growing areas. Any such product must bear the subpart K statements, except as noted below.

Several types of products that may be registered for application on farms, or in forests, nurseries, or greenhouses need not bear the subpart K statements. These are defined by the exceptions to the handler applicability section of part 170 (40 CFR 170.202(b)). If a product has both exempted uses and covered uses, the subpart K statements must appear on labeling.

Under subpart K, a reference statement on the label will direct users to part 170, which contains more specific requirements than those listed in the labeling.

b. *Existing statements.* Various types of worker protection statements currently appear in the labeling of many agricultural products. Most of these statements will be modified or will be replaced by the new subpart K requirements. Several comments on the proposed rule requested clarification of the relationship between subpart K and PR Notice 83-2, which called for certain worker protection statements, based on part 170, to be placed on agricultural product labels. EPA is revoking PR Notice 83-2 effective as of April 21, 1993, and registrants of products subject to PR Notice 83-2 must modify their labeling according to subpart K requirements. Some products within the scope of subpart K were not subject to PR Notice 83-2, including products registered for uses in forests and in greenhouses, for use on nursery ornamentals, and for use on crops whose culture does not involve commonly recognized hand labor tasks.

In addition to PR Notice 83-2 statements, some products currently bear statements pertaining to REIs and PPE that were required through registration or a Registration Standard or Special Review decision on an active ingredient contained in the product. The status of existing REI and PPE statements will be governed by the relevant subpart K sections on these topics (40 CFR 156.208 and 156.212). The Agency will issue a PR Notice to registrants with detailed guidelines on



how to evaluate existing labeling statements and on what new labeling statements to adopt.

c. *New statements.* Four types of worker protection statements may apply to products covered by the new subpart K: General statements, REI statements, worker notification statements, and PPE statements.

i. *General.* All products must carry a standard reference statement alerting the user that the product must be used according to part 170 (40 CFR 156.206(b)). A standard statement prohibiting users from allowing a pesticide to contact nonhandlers directly or through drift also must appear on all products (40 CFR 156.206(a)). A different version of this statement was required by PR Notice 83-2; that version must be replaced by the revised version. Products required to use either DANGER or WARNING as signal words (toxicity category I or II products) also must use the Spanish signal word PELIGRO or AVISO on the label, and a phrase in Spanish instructing the reader to have the label explained before using the product (40 CFR 156.206(e)).

If the product contains an active ingredient that is an organophosphate or an N-methyl carbamate, this information must be in the labeling either as part of the product name or in the Statement of Practical Treatment (First Aid) section of the labeling (40 CFR 156.206(c)(1)). This information is required in the labeling to aid employers who want to provide cholinesterase monitoring programs for their employees.

If the product is a fumigant, its status as a fumigant must be conveyed as part of the product-name or product-type information, placed close to the product name (40 CFR 156.206(c)(2)).

ii. *Restricted entry.* Products covered by subpart K must have a standard REI statement. Fumigants will retain their current entry restrictions, but the statements must be converted to the format of the subpart K restricted-entry statements (40 CFR 156.208(d)). The standard restricted-entry statement (40 CFR 156.208(a)) includes the restricted-entry interval (determined by 40 CFR 156.208(c)(d), (e), or (f)).

Some existing labeling bears entry-restriction statements. In determining the appropriate subpart K restricted-entry interval (REI), three situations are possible:

First, a product that has a product-specific REI based on foliar or soil dissipation data for the product (or for each active ingredient in the product) that have been submitted to and accepted by EPA, must retain this REI (40 CFR 156.208(e)).

The second situation involves products that have an REI that is not product-specific. Here the existing REI must be compared to the REI that would apply using the criteria in 40 CFR 156.208(c); the longer of the two REIs would be the restricted-entry interval.

Third, a product that has no REI (this would include products prohibiting entry "until sprays have dried or dusts have settled" and other products) must use the criteria of 40 CFR 156.208(c) to determine the appropriate REI unless all data required to set a product-specific interval are submitted to and accepted by EPA and a specific REI is approved.

Under the criteria of 40 CFR 156.208(c), REIs are determined by comparing available acute toxicity data for the active ingredients in a product. Registrants must use any obtainable results of toxicity testing (i.e., toxicity category) for the three relevant routes of exposure (dermal toxicity, skin irritation effects, and eye irritation effects) for each active ingredient in the product. If necessary, formulators should seek verification of toxicity category information from their suppliers. In some circumstances, acute oral toxicity or the toxicity of a registered technical product may be used. Among the acute toxicity data used in the comparison, the most toxic toxicity category determines the REI: 48 hours for toxicity category I, 24 hours for toxicity category II, or 12 hours for toxicity category III and toxicity category IV (40 CFR 156.208(c)). When no acute toxicity data are available for one or more of the active ingredients, registrants must use the toxicity category of the formulated product indicated by the signal word in the comparison.

When the REI has been determined, the appropriate number of hours is inserted into the restricted-entry statement of 40 CFR 156.208(b), unless the REI varies crop by crop.

If a product contains a toxicity category I active ingredient that is a cholinesterase-inhibiting organophosphate ester, a statement must be added requiring a 72-hour REI when the product is applied outdoors in an area where the average annual rainfall is less than 25 inches a year (40 CFR 156.208(c)(2)(i)).

EPA reserves the right to modify any subpart K restricted-entry interval for a product in the future. For example, this may occur either at the beginning or end of a Special Review for an active ingredient in the product (40 CFR 156.204(a)) or on evaluation of foliar or soil dissipation data, or other relevant data, showing that a different REI is warranted (40 CFR 156.204(b)). Registrants, or others, may undertake to

develop, at their discretion, foliar dissipation or other exposure data that would lead to the establishment of a product-specific REI; until that time, an interim REI will apply to the product.

iii. *Notification to workers.* Each product in toxicity category I for acute dermal toxicity or skin irritation potential, other products designated by EPA, and each fumigant that may be used in greenhouses must carry a standard statement indicating that workers must be given notification of the application both orally and by posting of treated areas (40 CFR 156.210). A definition of a fumigant appears in 40 CFR 156.203.

iv. *Personal protective equipment (PPE) and work clothing.* All products must bear statements specifying minimum PPE or work clothing as determined by subpart K. Appropriate PPE or work clothing is required by subpart K for all handling activities (40 CFR 156.212) and activities in treated areas before the expiration of an REI.

If a product has PPE or work clothing statements on the labeling, the registrant must compare these existing statements with the requirements of subpart K, and use the more protective or more specific item of PPE or work clothing for each area of the body to be protected. If product labeling prohibits the wearing of gloves or boots, such a prohibition must be retained on labeling as it is worded. The format of all PPE and work clothing statements should be that described in subpart K, even if a more protective or more specific item is being retained. The following are examples of comparisons of degree of protection or specificity between PPE items in subpart K and PPE items now on product labeling:

(1) A coverall is more protective than a long-sleeved shirt and long pants.

(2) A chemical-resistant (or liquidproof, waterproof, rubber, etc.) suit, rain gear or rain suit is more protective than a coverall or long-sleeved shirt and long pants.

(3) Chemical-resistant gloves are more protective than cotton, cloth, paper, or leather gloves.

(4) Chemical-resistant footwear is more protective than shoes and socks.

(5) Air-supplied or self-contained respirators are more protective than other classes or types of respirators.

(6) A cartridge or canister respirator is more protective than a dust/mist mask or dust/mist respirator.

As indicated below, certain words and phrases on existing labeling must be replaced by terms described in subpart K.

Unless the registrant has data that indicate a particular type of material(s)



is more chemically resistant to a particular pesticide product or a particular type of pesticide products, the labeling statements for the use of gloves in subpart K must be followed.

"Chemical resistant" must be used instead of such terms as "liquidproof," "rubber," "natural rubber," "vinyl," "synthetic rubber," "impervious," "neoprene," "plastic," "impermeable," or "nonporous." The term "waterproof" must be used in place of "water-resistant" or other terms if the pesticide is used dry or as an aqueous solution.

Unless the registrant has data indicating that the NIOSH/MSHA approval number prefix listed in subpart K is inappropriate for a particular pesticide product or a particular type of pesticide product, NIOSH/MSHA approval number prefixes indicated in subpart K shall be substituted for the general phrase "NIOSH/MSHA approved" in respirator statements on existing labeling. For a dust/mist mask, the NIOSH/MSHA approval number prefix is "TC-21C." For a cartridge respirator, the NIOSH/MSHA approval number prefix is "TC-23C." For a canister respirator, the NIOSH/MSHA approval number is prefix "TC-14G." For a supplied-air respirator, the NIOSH/MSHA approval number prefix is "TC-19C." For a self-contained breathing apparatus (SCBA), the NIOSH/MSHA approval number prefix is TC-13F."

To determine the appropriate PPE requirements for handling activities, the table in 40 CFR 156.212(e) is used in conjunction with the acute toxicity data on the formulated product for each route of exposure listed in the table. Registrants must determine the toxicity category of the formulated product for acute dermal toxicity, skin irritation potential, eye irritation potential, and acute inhalation toxicity. If the acute toxicity data for dermal or inhalation exposure are not available, the acute oral toxicity may be used as a surrogate. (If acute toxicity data for any of these routes of exposure are not available, the toxicity category of the formulated product as a whole must be used as a substitute for each such route of exposure.) Given the toxicity category for each route of exposure, the table gives the appropriate item or items of PPE or work clothing necessary to protect that part of the body. All such items taken together comprise the basic "outfit" to be worn by the handler. This "outfit," in the form of a list of PPE and work clothing items, is inserted into a standardized handler PPE statement (40 CFR 156.212(d)(3)).

In addition to the basic handler outfit statement, statements related to

exposure pattern are required for products in toxicity categories I and II (40 CFR 156.212(i)). For products that must be mixed or loaded, there must be a statement requiring the use of a chemical-resistant apron unless there is a requirement for a chemical-resistant suit (40 CFR 156.212(i)(1)). If overhead exposure is possible during handling, there must be a statement requiring the use of a wide-brimmed hat or a chemical-resistant hood (40 CFR 156.212(i)(2)). If equipment is used to mix, load, or apply the product, there must be a statement requiring the use of a chemical-resistant apron for persons who clean or repair equipment unless there is a requirement for a chemical-resistant suit (40 CFR 156.212(i)(3)).

If a product is sold as a concentrate and diluted for application, registrants may submit to the Agency or cite additional acute toxicity data on the diluted product. The PPE requirements for all handlers except mixer/loaders would then be based upon the data on the product as diluted for application.

The appropriate PPE and work clothing requirements for early-entry activities are the same as for applicators, except no respiratory protection device would be needed for early entry to pesticide-treated areas. In addition, the minimum PPE for early-entry activities consists of coveralls, chemical-resistant (or waterproof) gloves, shoes, and socks.

The Agency reserves the right to modify the subpart K requirements for PPE and work clothing for a product at some future time. This might occur at the beginning or end of a Special Review, or on review of data showing that different requirements are warranted.

d. *Labeling format*—i. *Language and location of labeling.* Specific language for worker protection labeling statements has been employed in subpart K to facilitate registrant compliance and to eliminate unnecessary variation among agricultural product labeling.

Each section of subpart K describing a required worker protection statement specifies a location on labeling for that statement. Most worker protection statements are required to be grouped near the beginning of the Directions for Use section of the product labeling under the heading Agricultural Use Requirements. General statements such as the reference to part 170 would appear first. The only statements required to appear elsewhere on labeling are the Spanish signal word and explanatory statement, which must appear close to the English signal word; the identification of the type of product

(organophosphate or *N*-methyl carbamate), which must be associated with the product name or in the Statement of Practical Treatment (First Aid) section; identification of a fumigant, which must appear as part of or close to the product name; and the PPE statements, which must appear in the Hazards to Humans (and Domestic Animals) section of the labeling. At the discretion of the registrant, any existing worker protection statements that are not superseded or modified by subpart K may be relocated under this overall worker protection heading, unless this would reduce existing protection associated with nonagricultural uses.

ii. *New or amended product labeling.* As of April 21, 1993, labeling submitted with applications for new or amended registration must comply with subpart K. The Agency will review and approve labeling for new products under normal Agency procedures.

iii. *Existing products.* Registrants of products that are registered as of the effective date of subpart K and that fall within the scope of subpart K must revise their product labeling to comply with the new requirements in one of the following ways:

(1) *Subpart K labeling followed exactly.* The Agency is specifying precise wording and exact requirements for worker protection labeling so that registrants of existing products will be able to revise product labeling more easily within the timeframes established. If a registrant certifies that the Worker Protection Standard PR Notice wording is followed exactly for a specific product, no Agency approval is required. The registrant must submit the following:

(A) An Application for Amended Registration (EPA Form 8570-1). Under "Subject of Amendment" in section II of the application, the registrant must identify the subject of the amendment as "WORKER PROTECTION CERTIFICATION" and include a certification statement such as, "All products being sold or distributed after April 21, 1994, will be in compliance with the labeling requirements of 40 CFR part 156, subpart K."

(B) A copy of the product's revised labeling (draft or final) with the changes highlighted, preferably with a felt-tipped marker. The Agency may choose to review this labeling as a check on the correctness of the registrant's compliance with subpart K.

(2) *Subpart K labeling not followed exactly.* If a registrant wishes to use wording different from that required by the Worker Protection Standard PR Notice, an amended registration must be



approved. The registrant must submit the following:

(A) An Application for Amended Registration (EPA Form 8570-1). Under "Subject of Amendment" in section II of the application, the registrant must identify the subject of the amendment as "WORKER PROTECTION LABELING AMENDMENT" and include a statement such as, "The applicant requests the Agency to review proposed revised labeling text that differs from 40 CFR part 156, subpart K."

(B) Five copies of the product's proposed draft labeling with the changes highlighted, preferably with a felt-tipped marker.

EPA encourages registrants seeking amendments under section 3(b) to submit their applications as soon as possible after the effective date of this regulation. EPA cannot assure that these amendments to registration will be approved in time to incorporate the revised language on the labeling by the deadlines. As stated above, the Agency intends that the standard and implementing labeling statements be put in place as quickly as possible. Thus, it is unlikely that EPA will grant an extension of time merely because a special labeling amendment has been proposed. This policy does not preclude registrants from requesting special amendments to registration; registrants, however, are required to meet applicable deadlines for labeling changes regardless of the status of any special amendment to registration.

iv. *Where to send amended application.* Applications for amended registration and other labeling must be submitted to the address listed in the Worker Protection Standard PR Notice and must be received on or before April 21, 1994. After this date, no product may be distributed or sold by the registrant (or a supplemental registrant) unless it is in compliance with the new subpart K. After October 23, 1995, all products distributed or sold by any person must bear labeling statements in compliance with the new subpart K.

v. *Earliest distribution or sale.* Finally, it should be noted that no product with the subpart K labeling statements may be distributed or sold by a registrant prior to April 21, 1993, even though the registrant may submit certification and EPA may approve new or amended products with subpart K labeling prior to that date.

vi. *Failure to comply.* If the items listed above, such as a certification statement, and, if applicable, the final printed labeling are not submitted on or before the date specified above, the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b). If,

after a certification is reviewed, the Agency determines that the registrant has incorrectly labeled the product, the product may be deemed to be misbranded in violation of FIFRA section 12(a)(1)(E) or the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b).

#### *C. EPA Communication and Training Efforts*

EPA has been engaged in the promotion of pesticide safety in agriculture for many years. In the course of this program, the Agency has developed working relationships with other Federal, State, and private organizations with similar objectives. It has sponsored the production and distribution of many types of pesticide safety materials. With the promulgation of the revised Worker Protection Standard, the Agency intends to develop appropriate materials to inform pesticide users and agricultural workers of the new requirements and to facilitate compliance.

1. *Product labeling.* The labeling of each agricultural pesticide product subject to part 170 will indicate, by means of a reference statement, that the product must be used according to these regulations. Requirements that vary from product to product, such as restricted-entry intervals and personal protective equipment, will appear as specific labeling statements, while requirements that do not vary among products, such as provision of decontamination sites, will not be repeated in each product's labeling.

2. *Development of materials.* To assist agricultural employers and pesticide users in complying with the revised Worker Protection Standard, the Agency intends to develop or to cooperate in the development of new educational materials and to revise some existing educational materials. These materials may be used by agricultural employers, migrant health clinics, Cooperative Extension offices, unions, commodity organizations, and similar groups.

a. *Compliance materials.* In addition to the promulgation of part 170 standard, the Agency intends to develop compliance guides and audiovisual compliance programs for agricultural employers and handler employers. These guides and programs will summarize and explain the regulations and will assist agricultural employers and handler employers to understand their responsibilities under part 170.

b. *Training programs for handlers and workers.* Existing written and audiovisual training programs on pesticide safety are expected to be revised as one source of assistance to

agricultural employers and handler employers in training their employees in pesticide safety. The training programs also may be used by others such as migrant health clinics, State agencies, and worker organizations to train agricultural workers and handlers. The training programs that are planned are handbooks, slides/tapes and videos in English and Spanish. They will be designed to meet the pesticide safety training requirements of the new part 170.

c. *Pesticide safety poster.* A bilingual pesticide safety poster for agricultural workers, entitled "Be Safe With Pesticides/Use Pesticidas Con Cuidado," has been developed by the Agency and has been distributed widely with the assistance of cooperating organizations. EPA plans to revise the poster and intends that display of this revised poster will fulfill the pesticide safety poster requirement of part 170.

d. *Guidelines on the selection and use of personal protective equipment (PPE).* Numerous comments from the public addressed the need for more information and guidance on the selection, use, and maintenance of PPE, including the avoidance of heat stress. The Agency has developed informational materials to provide guidance to pesticide users on these topics. The Agency also intends to develop guidance documents on cholinesterase monitoring to assist employers who have or want to have such a program.

3. *Liaison with other agencies and organizations.* In the past, EPA has had the assistance of a number of governmental agencies, farmworker service organizations, and trade associations in communicating with the agricultural community. The Agency will continue to work with these groups to inform affected persons of their rights and responsibilities under the revised standard, to assist in the reproduction and distribution of educational materials developed by the Agency and to encourage compliance on the part of their members and clients.

#### *D. National Compliance Monitoring Strategy*

The Agency's approach to enforcement of the Worker Protection Standard will be based on development of a National Compliance Monitoring Strategy for worker protection.

Pesticide use enforcement under FIFRA is dependent upon two broad authorities, the authority to regulate the distribution and sale of pesticides and the authority to require that registered pesticides be used according to their labeling. In most States, enforcement is



by State regulatory agencies through Cooperative Enforcement Agreements with EPA. EPA intends to assure enforcement of part 170 primarily through these agreements. The National Compliance Monitoring Strategy will be developed in partnership with the State regulatory agencies and will guide all enforcement activities related to this regulation.

To achieve maximum compliance, the Agency plans a major communication effort to inform the regulated community of the new requirements. The registrant of a pesticide product subject to part 170 will be governed by the timeframes for product relabeling laid out above. Once a relabeled product is used, it must be used in accordance with its labeling or the user will be in violation of FIFRA section 12(a)(2)(G). The product will bear a reference statement notifying the user that the product must be used in accordance with part 170.

The relationship between State and Federal entities in the enforcement of pesticide use regulations is governed by FIFRA section 26(a). With the exception of Nebraska, Wyoming, and (in part) Colorado, all States have primary use enforcement authority and have entered into Cooperative Enforcement Agreements with EPA. EPA regional offices annually negotiate the terms of these agreements with State regulatory agencies. Starting in fiscal year 1990, these agreements have included a specific section on worker protection enforcement activities. EPA expects that individual State compliance monitoring strategies will be developed once the National Compliance Monitoring Strategy is completed. These strategies will describe inspection and complaint response schemes and compliance communication activities to be conducted in each State. Development of interagency coordination agreements among various State agencies concerned with pesticide use and worker safety may be part of each State's strategy. EPA also anticipates that registrant compliance with worker-protection-related registration requirements will be monitored through activities agreed upon under Cooperative Enforcement Agreements.

Toward the accomplishment of these goals, money has been allocated to the States in EPA's budget for fiscal years 1990, 1991, and 1992 for the development of worker protection programs and related compliance activities. In States where Cooperative Enforcement Agreements are not in place, EPA regional inspectors will conduct compliance monitoring programs based

on the National Compliance Monitoring Strategy for this regulation.

#### VII. Public Docket

Documents relied upon by the Agency in the development of this final rule, including public comments submitted on the proposed rule, have been given the document control number OPP-300164A and are available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Office of Pesticide Programs' Document Control Office, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

#### VIII. Regulatory Requirements

##### A. Executive Order 12291

Under Executive Order 12291, a Regulatory Impact Analysis (RIA) has been developed and has been submitted to the Office of Management and Budget (OMB). This document is available for public inspection at the address given at the beginning of this Notice. A summary of the document follows.

EPA believes that the benefits that will accrue to agricultural workers and handlers from implementation of the WPS include the reduction in lost time from the workforce, reduced medical expenses, and increased well-being and productivity through being less affected by pesticide poisoning. These and any related benefits cannot be adequately quantified with available data. The Agency is convinced that the benefits to society from avoided incidents of acute, allergic, and delayed adverse effects from occupational exposures to agricultural-plant pesticides exceed the costs attributable to this final rule.

The final rule would serve to protect a labor force of 3.9 million exposed either directly or indirectly to pesticides as a result of their occupations on farms, in forests, in nurseries, in greenhouses, or in commercial pesticide-handling operations. This work force includes 1.4 million hired workers and handlers on farms, 92,000 hired workers and handlers in nurseries and greenhouses, and 10,000 hired workers and handlers in forests. There are also 38,000 commercial handlers who handle agricultural-plant pesticides. In addition, 2.36 million agricultural-establishment operators and unpaid workers (presumably family members) handle agricultural-plant pesticides or perform tasks related to the production of agricultural plants on farms, nurseries, and greenhouses.

EPA estimates that the incremental costs of this final rule will be about \$95 million in the first year and about \$50 million annually thereafter. To facilitate comparison with other regulations, EPA

has also calculated the incremental costs by annualizing them over 10 years at several illustrative interest rates. Using 3% and 10%, the annualized costs of this final rule would be about \$54 and \$56 million per year respectively. The annual cost of the rule is therefore expected to be \$50 to \$60 million dollars, while the estimated annual benefits of this final rule include avoiding 8,000 to 16,000 physician-diagnosed (nonhospitalized) acute and allergic pesticide poisoning incidents, avoiding about 300 hospitalized acute and allergic pesticide poisoning incidents, and avoiding potentially important numbers of cancer cases, serious developmental defects, stillbirths, persistent neurotoxic effects, and nondiagnosed acute and allergic poisoning incidents.

##### B. Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164; 5 U.S.C. 601-612) for its impact on small businesses. The results of that review have been incorporated into the Regulatory Impact Analysis and are discussed in more detail in that document (available for public inspection at the address listed at the beginning of this Notice). A summary follows.

The revised final rule exempts owners of agricultural establishments and members of their immediate family from the provisions pertaining to safety training and information, decontamination facilities, notification of pesticide treatments, and emergency assistance. EPA presumes that owners and family members will provide themselves and each other with these protections, and has chosen not to regulate such behavior. This decision represents a significant exemption for small entities, since about 45 percent (251,000 of 560,000) of the agricultural establishments within the scope of the WPS do not hire labor and are, therefore, exempt from all but a few of the final rule's requirements.

As a result, the analysis reveals that agricultural establishments without hired labor will bear a low cost-burden as compared to agricultural establishments with hired labor. The incremental continuing annual costs averaged across all establishments without hired labor are about \$15 per establishment, whereas the costs averaged across all hired-labor agricultural establishments are about \$140 per establishment per year. Non-hired-labor feed and grain farms, which make up the largest crop segment, will incur incremental continuing annual



costs averaging about \$10 per farm. Hired-labor feed and grain farms will incur incremental continuing annual costs averaging about \$55 per farm.

None of the provisions of the regulation provide a direct efficiency of size to establishments with many employees. Most of the provisions are totally or mostly variable (per worker) costs. However, two provisions that contain some fixed (per establishment) cost elements are training and notification. Even these provisions are not directly efficiency-of-size cost factors, due to: (1) The diverse and sporadic nature of pesticide-use and labor-use practices, and (2) the exceptions and options in the rule that allow employers to select the most cost-effective option for their particular circumstance.

The variability in the cost-factors due to these exceptions and options is difficult to quantify. Therefore, the analysis of the impact on 1-worker agricultural establishments versus the impact on 10-worker agricultural establishments is a "worst-case" analysis that assumes that all costs of training and notification are fixed rather than variable. This results in an overestimate of the impact of this rule to 1-worker agricultural establishments. However, even with the overestimate, results indicate that the burden is not unreasonably higher for such small establishments. The average incremental continuing annual cost due to all provisions for a feed and grain farm with one hired employee is about \$25 (or \$25 per employee). For a feed and grain farm with 10 hired employees, it is about \$115 per year (or \$10 per employee). For vegetable/fruit/nut establishments with one hired employee, the average incremental continuing annual cost for all provisions is about \$95 per establishment (or \$95 per employee). The cost is about \$650 (or \$65 per employee) for a vegetable/fruit/nut establishment with 10 hired employees.

The Agency has determined that the burden on small agricultural businesses does not outweigh the risk to handlers and workers employed in those businesses, and that further exemptions from the regulation for small businesses would not be warranted.

#### C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control Number 2070-0060.

The reporting burden for registrants is estimated to average 5.9 hours per product, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

#### List of Subjects in 40 CFR Parts 156 and 170

Environmental protection, Labeling, Pesticides and pests, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

William K. Reilly,  
Administrator.

Therefore, chapter I of Title 40 is amended in subchapter E, to read as follows:

#### PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

1. In part 156:
  - a. The authority citation for part 156 continues to read as follows:  
Authority: 7 U.S.C. 136-136y.
  - b. Section 156.10 is designated as subpart A, and the subpart heading is added, § 156.10 is amended by revising paragraph (i)(2)(viii), and subparts B through J are added and reserved, to read as follows:

#### Subpart A—General Provisions

##### § 156.10 Labeling requirements.

- (i) \* \* \*
- (2) \* \* \*
- (viii) Worker protection statements meeting the requirements of subpart K of this part.

c. New subpart K, consisting of §§ 156.200, 156.203, 156.204, 156.206, 156.208, 156.210, and 156.212, is added, to read as follows:

#### Subpart K—Worker Protection Statements

- Sec.
- 156.200 Scope and applicability.
  - 156.203 Definitions.
  - 156.204 Modification and waiver of requirements.
  - 156.206 General statements.
  - 156.208 Restricted-entry statements.

- Sec.
- 156.210 Notification-to-workers statements.
  - 156.212 Personal protective equipment statements.

#### Subpart K—Worker Protection Statements

##### § 156.200 Scope and applicability.

(a) *Scope.* (1) This subpart prescribes statements that must be placed on the pesticide label and in pesticide labeling. These statements incorporate by reference the Worker Protection Standard, part 170 of this chapter. The requirements addressed in these statements are designed to reduce the risk of illness or injury resulting from workers' and pesticide handlers' occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments as defined in § 170.3 of this chapter. These statements refer to specific workplace practices designed to reduce or eliminate exposure and to respond to emergencies that may arise from the exposures that may occur.

(2) This subpart prescribes interim requirements that must be placed on the pesticide label and in pesticide labeling. These interim requirements pertain to restricted-entry intervals, personal protective equipment, and notification. On a case-by-case basis, these interim requirements will be reviewed and may be revised during reregistration or other agency review processes.

(b) *Applicability.* (1) The requirements of this subpart apply to each pesticide product that bears directions for use in the production of any agricultural plant on any agricultural establishment as defined in § 170.3 of this chapter, or whose labeling reasonably permits such use.

(2) The requirements of this subpart do not apply to a product that bears directions solely for uses excepted by § 170.202(b) of this chapter.

(c) *Effective dates.* (1) The effective date of this subpart is October 20, 1992.

(2) No pesticide product bearing labeling amended and revised as required by this subpart shall be distributed or sold by a registrant prior to April 21, 1993.

(3) No product to which this subpart applies shall be distributed or sold without amended labeling by any registrant after April 21, 1994.

(4) No product to which this subpart applies shall be distributed or sold without amended labeling by any person after October 23, 1995.



**§ 156.203 Definitions.**

Terms in this subpart have the same meanings as they do in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, as used in this subpart, shall have the meanings stated below:

*Fumigant* means any pesticide product that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

*Restricted-entry interval* means the time after the end of a pesticide application during which entry to the treated area is restricted.

**§ 156.204 Modification and waiver of requirements.**

(a) *Modification on Special Review.* If the Agency concludes in accordance with § 154.25(c) of this chapter that a pesticide should be placed in Special Review because the pesticide meets or exceeds the criteria for human health effects of § 154.7(a)(1)(2) or (6) of this chapter, the Agency may modify the personal protective equipment required for handlers or early-entry workers or both, the restricted-entry intervals, or the notification to workers requirements.

(b) *Other modifications.* The Agency, pursuant to this subpart and authorities granted in FIFRA sections 3, 6, and 12, may, on its initiative or based on data submitted by any person, modify or waive the requirements of this subpart, or permit or require alternative labeling statements. Supporting data may be either data required by Subdivisions U or K of the Pesticide Assessment Guidelines or data from medical, epidemiological, or health effects studies. The Pesticide Assessment Guidelines contain the standards for conducting acceptable tests, guidance on evaluation and reporting of data, definition of terms, further guidance on when data are required, and examples of acceptable protocols. They are available through the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. A registrant who wishes to modify any of the statements required in §§ 156.206, 156.208, 156.210, or 156.212 must submit an application for amended registration unless specifically directed otherwise by the Agency.

**§ 156.206 General statements.**

(a) *Application restrictions.* Each product shall bear the statement: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application." This statement shall be near the beginning of the DIRECTIONS

FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *40 CFR Part 170 reference statement.* (1) Each product shall bear the reference statement: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170." This statement shall be placed on the product label under the heading AGRICULTURAL USE REQUIREMENTS.

(2) Each product shall bear the statement: "This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label [in this labeling] about [use any of the following that are applicable] personal protective equipment, restricted-entry interval, and notification to workers." These statements shall be placed immediately following the reference statement required by paragraph (b)(1) of this section, or they shall be placed in the supplemental product labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(3) If the statements in paragraph (b)(2) of this section are included in supplemental labeling rather than on the label of the pesticide container, the container label must contain this statement immediately following the statement required in paragraph (b)(1) of this section: "Refer to supplemental labeling entitled AGRICULTURAL USE REQUIREMENTS in the DIRECTIONS FOR USE section of the labeling for information about this standard."

(4) If the statements in paragraph (b)(2) of this section are included in supplemental labeling, they must be preceded immediately by the statement in paragraph (b)(1) of this section under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(c) *Product-type identification.* (1) If the product contains an organophosphate (i.e., an organophosphorus ester that inhibits cholinesterase) or an N-methyl carbamate (i.e., an N-methyl carbamic acid ester that inhibits cholinesterase), the label shall so state. The statement shall be associated with the product name or product-type identification or shall be in the STATEMENT OF PRACTICAL TREATMENT or FIRST AID section of the label.

(2) If the product is a fumigant, the label shall so state. The identification shall appear:

- (i) As part of the product name; or
- (ii) Close to the product name, as part of the product-type identification or as a separate phrase or sentence.

(d) *State restrictions.* Each product shall bear the statement: "For any requirements specific to your State, consult the agency in your State responsible for pesticide regulation." This statement shall be under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(e) *Spanish warning statements.* If the product is classified as toxicity category I or toxicity category II according to the criteria in § 156.10(h)(1), the signal word shall appear in Spanish in addition to English followed by the statement, "Si Usted no entiende la etiqueta, busque a alguien para que se la explique a Usted en detalle. (If you do not understand the label, find someone to explain it to you in detail)." The Spanish signal word "PELIGRO" shall be used for products in toxicity category I, and the Spanish signal word "AVISO" shall be used for products in toxicity category II. These statements shall appear on the label close to the English signal word.

(Approved by the Office of Management and Budget under control number 2070-0060.)

**§ 156.208 Restricted-entry statements.**

(a) *Requirement.* Each product with a restricted-entry interval shall bear the following statement: "Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI)." This statement shall be under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(b) *Location of specific restricted-entry interval statements.* (1) If a product has one specific restricted-entry interval applicable to all registered uses of the product on agricultural plants, the restricted-entry interval for the product shall appear as a continuation of the statement required in paragraph (a) of this section and shall appear as follows: "of X hours" or "of X days" or "until the acceptable exposure level of X ppm or mg/m<sup>3</sup> is reached."

(2) If different restricted-entry intervals have been established for some crops or some uses of a product, the restricted-entry statement in paragraph (b)(1) of this section shall be associated on the labeling of the product with the directions for use for each crop each use to which it applies, immediately preceded or immediately followed by the words "Restricted-entry interval" (or the letters "REI").



(c) *Restricted-entry interval based on toxicity of active ingredient—(1) Determination of toxicity category.*

A restricted-entry interval shall be established based on the acute toxicity of the active ingredients in the product. For the purpose of setting the restricted-entry interval, the toxicity category of each active ingredient in the product shall be determined by comparing the obtainable data on the acute dermal toxicity, eye irritation effects, and skin irritation effects of the ingredient to the criteria of § 156.10(h)(1). The most toxic of the applicable toxicity categories that are obtainable for each active ingredient shall be used to determine the restricted-entry interval for that product. If no acute dermal toxicity data are obtainable, data on acute oral toxicity also shall be considered in this comparison. If no applicable acute toxicity data are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If no acute toxicity data are obtainable on the active ingredients and no toxicity category of a registered manufacturing-use product is obtainable, the toxicity category of the end-use product (corresponding to the signal word on its labeling) shall be used.

(2) *Restricted-entry interval for sole active ingredient products.* (i) If the product contains only one active ingredient and it is in toxicity category I by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 48 hours. If, in addition, the active ingredient is an organophosphorus ester that inhibits cholinesterase and that may be applied outdoors in an area where the average annual rainfall for the application site is less than 25 inches per year, the following statement shall be added to the restricted-entry interval statement: "(72 hours in outdoor areas where average annual rainfall is less than 25 inches a year)."

(ii) If the product contains only one active ingredient and it is in toxicity category II by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 24 hours.

(iii) If the product contains only active ingredients that are in toxicity category III or IV by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 12 hours.

(3) *Restricted-entry interval for multiple active ingredient products.* If the product contains more than one active ingredient, the restricted-entry interval (including any associated statement concerning use in arid areas

under paragraph (c)(2)(i) of this section) shall be based on the active ingredient that requires the longest restricted-entry interval as determined by the criteria in this section.

(d) *Exception for fumigants.* The criteria for determining restricted-entry intervals in paragraph (c) of this section shall not apply to any product that is a fumigant. For fumigants, any existing restricted-entry interval (hours, days, or acceptable exposure level) shall be retained. Entry restrictions for fumigants have been or shall be established on a case-by-case basis at the time of registration, reregistration, or other Agency review process.

(e) *Existing product-specific restricted-entry intervals.* (1) A product-specific restricted-entry interval, based on data collected in accordance with § 158.390 of this chapter and Subdivision K of the Pesticide Assessment Guidelines, shall supersede any restricted-entry interval applicable to the product under paragraph (c) of this section.

(2) Product-specific restricted-entry intervals established for pesticide products or pesticide uses that are not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(f) *Existing interim restricted-entry intervals.* (1) An interim restricted-entry interval established by the Agency before the effective date of this subpart will continue to apply unless a longer restricted-entry interval is required by paragraph (c) of this section.

(2) Existing interim restricted-entry intervals established by the Agency for pesticide products or pesticide uses not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling. (Approved by the Office of Management and Budget under control number 2070-0060.)

**§ 156.210 Notification-to-workers statements.**

(a) *Requirement.* Each product that meets the requirements of paragraph (b) of this section shall bear the posting and oral notification statements prescribed below. The statements shall be in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *Notification to workers of pesticide application.* (1) Each product that contains any active ingredient classified as toxicity category I for either acute dermal toxicity or skin irritation potential under the criteria in § 156.10(h)(1) shall bear the statement:

"Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas." If no acute dermal toxicity data are obtainable, data on acute oral toxicity of the active ingredient shall be considered instead. If no data on acute dermal toxicity, skin irritation potential, or acute oral toxicity are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If none of the applicable acute toxicity data are obtainable on the active ingredient and no toxicity category of the registered manufacturing-use product is obtainable, the toxicity category of the end-use product corresponding to the product's signal word shall be used.

(2) Each product that is a fumigant and is registered for use in a greenhouse (or whose labeling allows use in a greenhouse) shall bear the statement: "For greenhouse applications, notify workers of the application by warning them orally and by posting warning signs outside all entrances to the greenhouse."

(Approved by the Office of Management and Budget under control number 2070-0060.)

**§ 156.212 Personal protective equipment statements.**

(a) *Requirement.* Each product shall bear the personal protective equipment statements prescribed in paragraphs (d) through (f) of this section.

(b) *Exceptions.* (1) If personal protective equipment were required for a product before the effective date of this subpart, the existing requirements shall be retained on the labeling wherever they are more specific or more protective (as specified in EPA guidance materials) than the requirements in the table in paragraph (e) of this section.

(2) Any existing labeling statement that prohibits the use of gloves or boots overrides the corresponding requirement in paragraph (e) of this section and must be retained on the labeling.

(3) If the product labeling contains uses that are not covered by part 170 of this chapter, the registrant may adopt the personal protective equipment required in this section for those uses. However, if the personal protective equipment required in this section would not be sufficiently protective or would be onerously overprotective for uses not covered by part 170 of this chapter, the registrant must continue to apply the existing personal protective equipment requirements to those uses. The labeling must indicate which



personal protective equipment requirements apply to uses covered by part 170 of this chapter and which personal protective equipment requirements apply to other uses.

(c) *Location of personal protective equipment statements*—(1) *Personal protective equipment statements for pesticide handlers*. Personal protective equipment statements for pesticide handlers shall be in the HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) section of the labeling. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are identified.

(2) *Personal protective equipment statements for early-entry workers*. Personal protective equipment statements for early-entry workers shall be placed in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS and immediately after the restricted-entry statement required in § 156.208(a).

(d) *Personal protective equipment statements for pesticide handlers*. (1) The table in paragraph (e) of this section specifies minimum requirements for personal protective equipment (as defined in § 170.240 of this chapter) and work clothing for pesticide handlers. This personal protective equipment requirement applies to any product that presents a hazard through any route of exposure identified in the table (acute dermal toxicity, skin irritation potential, acute inhalation toxicity, and eye irritation potential).

(2) The requirement for personal protective equipment is based on the acute toxicity category of the end-use product for each route of exposure as defined by § 156.10(h)(1). If data to determine the acute dermal toxicity or the acute inhalation toxicity are not obtainable, the acute oral toxicity shall be used as a surrogate to determine the personal protective equipment requirements for that route of exposure. If data to determine the acute toxicity of the product by a specific route of exposure (including acute oral toxicity

in lieu of acute dermal or acute inhalation toxicity) are not obtainable, the toxicity category corresponding to the signal word of the end-use product shall be used to determine personal protective equipment requirements for that route of exposure. If the signal word is "CAUTION," toxicity category III will be used.

(3) The minimum personal protective equipment and work clothing requirements specified in this section shall be included in a statement such as the following: "Applicators and other handlers must wear: (body protection statement); (glove statement, if applicable); (footwear statement, if applicable); (protective eyewear statement, if applicable); (respirator statement, if applicable)." The format of statements given in this paragraph is optional, but it is recommended for clarity.

(e) *Summary of personal protective equipment requirements*. The following Table 1 summarizes the personal protective equipment requirements by route of exposure and toxicity category:

TABLE 1.—MINIMUM PERSONAL PROTECTIVE EQUIPMENT (PPE) AND WORK CLOTHING FOR HANDLING ACTIVITIES

Route of Exposure	Toxicity Category of End-Use Product			
	I	II	III	IV
Dermal Toxicity or Skin Irritation Potential <sup>1</sup>	Coveralls worn over long-sleeved shirt and long pants Socks Chemical-resistant footwear Chemical-resistant gloves <sup>2</sup>	Coveralls worn over short-sleeved shirt and short pants Socks Chemical-resistant footwear Chemical-resistant gloves <sup>2</sup>	Long-sleeved shirt and long pants Socks Shoes Chemical-resistant gloves <sup>2</sup>	Long-sleeved shirt and long pants Socks Shoes No minimum <sup>4</sup>
Inhalation Toxicity	Respiratory protection device <sup>3</sup>	Respiratory protection device <sup>3</sup>	No minimum <sup>4</sup>	No minimum <sup>4</sup>
Eye Irritation Potential	Protective eyewear	Protective eyewear	No minimum <sup>4</sup>	No minimum <sup>4</sup>

<sup>1</sup> If dermal toxicity and skin irritation potential are in different toxicity categories, protection shall be based on the more toxic (lower numbered) category.

<sup>2</sup> For labeling language for chemical-resistant gloves, see paragraph (f) of this section.

<sup>3</sup> For labeling language for respiratory protection device, see paragraphs (g) and (h) of this section.

<sup>4</sup> Although no minimum PPE is required by this section for this toxicity category and route of exposure, the Agency may require PPE on a product-specific basis.

(f) *Chemical-resistant gloves labeling statements for pesticide handlers*. If the table in paragraph (e) of this section indicates that chemical-resistant gloves are required, the glove statement shall be as specified in paragraph (f)(2), (3), (4), or (5) of this section.

(1) *Exception*. The registrant shall specify a glove type other than that selected through the criteria in paragraphs (f)(2) through (5) of this section if information available to the registrant indicates that such a glove type is more appropriate or more protective than the glove type specified in this section. The statement must specify the particular types of chemical-resistant glove (such as nitrile, butyl, neoprene, and/or barrier-laminate).

(2) *Solid formulations*. For products formulated and applied as solids or formulated as solids and diluted solely with water for application, the glove statement shall specify: "waterproof gloves."

(3) *Aqueous-based formulations*. For products formulated and applied as a water-based liquid or formulated as a water-based liquid and diluted solely with water for application, the glove statement may specify: "waterproof gloves" instead of the statement in paragraph (f)(4) of this section.

(4) *Other liquid formulations*. For products formulated or diluted with liquids other than water, the glove statement shall specify: "chemical-

resistant (such as nitrile or butyl) gloves."

(5) *Gaseous formulations and applications*. For products formulated or applied as gases, any existing glove statement established before the effective date of this subpart, including any glove prohibition statement, will continue to apply. If no glove statement or glove prohibition now exists, the glove statement shall specify "chemical-resistant (such as nitrile or butyl) gloves."

(g) *Existing respirator requirement for pesticide handlers on product labeling*—

(1) *General requirement*. If a statement placed on a product's labeling before the effective date of this subpart indicates



that respiratory protection is required, that requirement for protection shall be retained. The statement must specify, or be amended to specify, one of the following respirator types and the appropriate MSHA/NIOSH approval number prefix:

(i) Dust/mist filtering respirator with MSHA/NIOSH approval number prefix TC-21C; or

(ii) Respirator with an organic-vapor-removing cartridge and a prefilter approved for pesticides with MSHA/NIOSH approval number prefix TC-23C or with a canister approved for pesticides with MSHA/NIOSH approval number prefix TC-14G; or

(iii) Supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C or self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F.

(2) *Respirator type already specified on labeling.* If the existing respiratory protection requirement specifies a respirator type, it shall be retained. The respirator statement must be revised, if necessary, to conform to the wording in paragraph (g)(1) of this section.

(3) *Respirator type not already specified on labeling.* If the existing respiratory protection requirement on product labeling does not specify a respirator type as listed in paragraph (g)(1) of this section, the specific respirator type shall be that required in the criteria in paragraphs (g)(3)(ii) through (vi) of this section.

(i) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device selected through the criteria in paragraphs (g)(3)(ii) through (vi) of this section would not be adequately protective, or might increase risks to the user unnecessarily.

(ii) *Gases applied outdoors.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used outdoors, the respiratory protection statement shall be: "For handling activities outdoors, use either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G)."

(iii) *Gases used in enclosed areas.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used in greenhouses or other enclosed areas, the respiratory protection statement shall specify: "For handling activities in enclosed areas,

use either a supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C, or a self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F."

(iv) *Solids.* For products that are formulated and applied as solids, the respiratory protection statement shall specify: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(v) *Liquids in toxicity category I.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category I, the respiratory protection statement shall specify: "either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G)."

(vi) *Liquids in toxicity category II.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category II, the respiratory protection statement shall specify: "For handling activities during (select uses applicable to the product: airblast, mistblower, pressure greater than 40 p.s.i. with fine droplets, smoke, mist, fog, aerosol or direct overhead) exposures, wear either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G). For all other exposures, wear a dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(h) *New respirator requirement established for pesticide handlers in this part—(1) General requirement.* If the table in paragraph (e) of this section indicates a respiratory protection device is required, and existing product labeling has no respiratory protection requirement, the registrant shall add a respiratory protection statement that specifies a: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(2) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device required in paragraph (h)(1) of this section would not be adequately protective or might increase risks to the user unnecessarily.

(i) *Additional personal protective equipment requirements for pesticide handlers.* In addition to the minimum personal protective equipment and work clothing requirements given in the table in paragraph (e) of this section, the labeling statement for any product in toxicity category I or II on the basis of dermal toxicity or skin irritation potential (or their surrogate as specified in paragraph (d)(2) of this section), shall include the following personal protective equipment instructions, additions, or substitutions as applicable:

(1) If the product is not ready-to-use and there is no existing requirement for a chemical-resistant suit, the following statement shall be included: "Mixers/Loaders: add a chemical-resistant apron."

(2) If the application of the product may result in overhead exposure to any handler (for example, applicator exposure during airblast spraying of orchards or flagger exposure during aerial application), the following statement shall be included: "Overhead Exposure: wear chemical-resistant headgear."

(3) If any type of equipment other than the product container may be used to mix, load, or apply the product, and there is no requirement for a chemical-resistant protective suit, the following statement shall be included: "For Cleaning Equipment: add a chemical-resistant apron."

(j) *Personal protective equipment for early-entry workers.* This paragraph specifies minimum requirements for personal protective equipment (as defined in § 170.240 of this chapter) and work clothing for early-entry workers.

(1) For all pesticide products, add the statement: "For early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, wear: (list the body protection, glove, footwear, protective eyewear, and protective headgear, if applicable, statements specified for applicators and other handlers, but omit any respiratory protection statement)."

(2) If the body protection statement in the personal protective equipment requirement for handlers specifies a long-sleeved shirt and long pants, "coveralls" must be specified in the statement of personal protective equipment for early-entry workers.

(3) If there is no statement requiring gloves and no prohibition against gloves for applicators and other handlers under the heading HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) in the labeling, add a requirement for



"waterproof gloves" in the statement of personal protective equipment for early-entry workers.

(Approved by the Office of Management and Budget under control number 2070-0060.)

2. By revising part 170 to read as follows:

## PART 170—WORKER PROTECTION STANDARD

### Subpart A—General Provisions

Sec.

- 170.1 Scope and purpose.
- 170.3 Definitions.
- 170.5 Effective date and compliance dates.
- 170.7 General duties and prohibited actions.
- 170.9 Violations of this part.

### Subpart B—Standard for Workers

Sec.

- 170.102 Applicability of this subpart.
- 170.110 Restrictions associated with pesticide applications.
- 170.112 Entry restrictions.
- 170.120 Notice of applications.
- 170.122 Providing specific information about applications.
- 170.124 Notice of applications to handler employers.
- 170.130 Pesticide safety training.
- 170.135 Posted pesticide safety information.
- 170.150 Decontamination.
- 170.160 Emergency assistance.

### Subpart C—Standard for Pesticide Handlers

Sec.

- 170.202 Applicability of this subpart.
- 170.210 Restrictions during applications.
- 170.222 Providing specific information about applications.
- 170.224 Notice of applications to agricultural employers.
- 170.230 Pesticide safety training.
- 170.232 Knowledge of labeling and site-specific information.
- 170.234 Safe operation of equipment.
- 170.235 Posted pesticide safety information.
- 170.240 Personal protective equipment.
- 170.250 Decontamination.
- 170.260 Emergency assistance.

Authority: 7 U.S.C. 136w.

### Subpart A—General Provisions

#### § 170.1 Scope and purpose.

This part contains a standard designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

#### § 170.3 Definitions.

Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

*Agricultural employer* means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

*Agricultural establishment* means any farm, forest, nursery, or greenhouse.

*Agricultural plant* means any plant grown or maintained for commercial or research purposes and includes, but is not limited to, food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings.

*Chemigation* means the application of pesticides through irrigation systems.

*Commercial pesticide handling establishment* means any establishment, other than an agricultural establishment, that:

(1) Employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants.

(2) Employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a crop advisor.

*Crop advisor* means any person who is assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks.

*Early entry* means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

*Farm* means any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants.

*Forest* means any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products.

*Fumigant* means any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose method of pesticidal action is through the gaseous state.

*Greenhouse* means any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit

worker entry. This term includes, but is not limited to, polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.

*Hand labor* means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing the tasks of crop advisors.

*Handler* means any person, including a self-employed person:

(1) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which subpart C of this part applies and who is:

(i) Mixing, loading, transferring, or applying pesticides.

(ii) Disposing of pesticides or pesticide containers.

(iii) Handling opened containers of pesticides.

(iv) Acting as a flagger.

(v) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(vi) Assisting with the application of pesticides.

(vii) Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met:

(A) To operate ventilation equipment.

(B) To adjust or remove coverings used in fumigation.

(C) To monitor air levels.

(viii) Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

(ix) Performing tasks as a crop advisor:

(A) During any pesticide application.

(B) Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met.



(C) During any restricted-entry interval.

(2) The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

*Handler employer* means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

*Immediate family* includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

*Nursery* means any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include, but are not limited to, flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.

*Owner* means any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part.

*Restricted-entry interval* means the time after the end of a pesticide application during which entry into the treated area is restricted.

*Treated area* means any area to which a pesticide is being directed or has been directed.

*Worker* means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities relating to the production of agricultural plants on an agricultural establishment to which subpart B of this part applies. While persons employed by a commercial pesticide handling establishment are performing tasks as crop advisors, they are not workers covered by the requirements of subpart B of this part.

#### § 170.5 Effective date and compliance dates.

(a) *Effective date.* The effective date for this part, including § 170.112(e), shall be October 20, 1992.

(b) *Accelerated provisions.* The compliance date shall be April 21, 1993, for:

- (1) Section 170.112(a) through (c)(3);
- (2) Section 170.112(d)(1) through (d)(2)(ii);

(3) The requirement of § 170.112(c)(3) as referenced in § 170.112(d)(2)(iii);

(4) The requirement of § 170.112(c)(3) as referenced in § 170.112(e)(5);

(5) Section 170.120(a)(3); and

(6) Section 170.120(b)(3).

(c) *All other provisions.* The compliance date for all other provisions of this part shall be April 15, 1994.

#### § 170.7 General duties and prohibited actions.

(a) *General duties.* The agricultural employer or the handler employer, as appropriate, shall:

(1) Assure that each worker subject to subpart B of this part or each handler subject to subpart C of this part receives the protections required by this part.

(2) Assure that any pesticide to which subpart C of this part applies is used in a manner consistent with the labeling of the pesticide, including the requirements of this part.

(3) Provide, to each person who supervises any worker or handler, information and directions sufficient to assure that each worker or handler receives the protections required by this part. Such information and directions shall specify which persons are responsible for actions required to comply with this part.

(4) Require each person who supervises any worker or handler to assure compliance by the worker or handler with the provisions of this part and to assure that the worker or handler receives the protections required by this part.

(b) *Prohibited actions.* The agricultural employer or the handler employer shall not take any retaliatory action for attempts to comply with this part or any action having the effect of preventing or discouraging any worker or handler from complying or attempting to comply with any requirement of this part.

#### § 170.9 Violations of this part.

(a) Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) (FIFRA) section 12(a)(2)(G) it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." When this part is referenced on a label, users must comply with all of its requirements except those that are inconsistent with product-specific instructions on the labeling. For the purposes of this part, EPA interprets the term "use" to include:

(1) Preapplication activities, including, but not limited to:

(i) Arranging for the application of the pesticide;

(ii) Mixing and loading the pesticide; and

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

(2) Application of the pesticide.

(3) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus 30 days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination.

(4) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides that have been opened, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(b) A person who has a duty under this part, as referenced on the pesticide product label, and who fails to perform that duty, violates FIFRA section 12(a)(2)(G) and is subject to a civil penalty under section 14. A person who knowingly violates section 12(a)(2)(G) is subject to section 14 criminal sanctions.

(c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.

(d) The requirements of this part, including the decontamination requirements, shall not, for the purposes of section 653(b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the OSHA Field Sanitation Standard, 29 CFR 1928.110, or other agricultural, nonpesticide hazards.

#### Subpart B—Standard for Workers

##### § 170.102 Applicability of this subpart.

(a) *Requirement.* Except as provided by paragraph (b) of this section, this subpart applies when any pesticide product is used on an agricultural establishment in the production of agricultural plants.



(b) *Exceptions.* This subpart does not apply when any pesticide is applied on an agricultural establishment in the following circumstances:

(1) For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.

(2) On livestock or other animals, or in or about animal premises.

(3) On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.

(4) On plants that are in ornamental gardens, parks, and public or private lawns and grounds that are intended only for aesthetic purposes or climatic modification.

(5) By injection directly into agricultural plants. Direct injection does not include "hack and squirt," "frill and spray," chemigation, soil-incorporation, or soil-injection.

(6) In a manner not directly related to the production of agricultural plants,

including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use.

(7) For control of vertebrate pests.

(8) As attractants or repellents in traps.

(9) On the harvested portions of agricultural plants or on harvested timber.

(10) For research uses of unregistered pesticides.

(c) *Exemptions.* For the purposes of this subpart, the owners of agricultural establishments need not assure that the protections in § 170.112(c)(5) through (9); § 170.112(d)(2)(iii) and 170.112(e); and §§ 170.120, 170.122, 170.130, 170.135, 170.150, and 170.160 are provided to themselves and members of their immediate family while they are performing tasks related to the production of agricultural plants on their own agricultural establishment. However, they must provide any protections required by these sections to other workers and other persons who

are not members of their immediate family and are encouraged to provide the protections to themselves and members of their families.

#### § 170.110 Restrictions associated with pesticide applications.

(a) *Farms and forests.* During the application of any pesticide on a farm or in a forest, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the treated area.

(b) *Nurseries.* In a nursery, during any pesticide application described in column A of Table 1 of this paragraph, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 1 of this paragraph. After the application is completed, until the end of any restricted-entry interval, the entry-restricted area is the treated area.

Table 1.—Entry-Restricted Areas in Nurseries During Pesticide Applications

A. During Application of a Pesticide:	B. Workers are Prohibited in:
(1) (a) Applied: (i) Aerially, or (ii) In an upward direction, or (iii) Using a spray pressure greater than 150 psi, or	Treated area plus 100 feet in all directions on the nursery
(b) Applied as a: (i) Fumigant, or (ii) Smoke, or (iii) Mist, or (iv) Fog, or (v) Aerosol.	
(2)(a) Applied downward using: (i) A height of greater than 12 inches from the planting medium, or (ii) A fine spray, or (iii) A spray pressure greater than 40 psi and less than 150 psi.	Treated area plus 25 feet in all directions on the nursery
(b) Not as in 1 or 2(a) above but for which a respiratory protection device is required for application by the product labeling.	
(3) Applied otherwise.	Treated area

(c) *Greenhouses.* (1) When a pesticide application described in column A of Table 2 under paragraph (c)(4) of this section takes place in a greenhouse, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 2 until the time specified in column C of Table 2 has expired.

(2) After the time specified in column C of Table 2 under paragraph (c)(4) of this section has expired, until the expiration of any restricted-entry interval, the agricultural employer shall not allow or direct any worker to enter

or to remain in the treated area as specified in column D of Table 2 under paragraph (c)(4) of this section, except as provided in § 170.112.

(3) When column C of Table 2 under paragraph (c)(4) of this section specifies that ventilation criteria must be met, ventilation shall continue until the air concentration is measured to be equal to or less than the inhalation exposure level the labeling requires to be achieved. If no inhalation exposure level is listed on the labeling, ventilation shall continue until after:

(i) Ten air exchanges are completed; or

(ii) Two hours of ventilation using fans or other mechanical ventilating systems; or

(iii) Four hours of ventilation using vents, windows or other passive ventilation; or

(iv) Eleven hours with no ventilation followed by 1 hour of mechanical ventilation; or

(v) Eleven hours with no ventilation followed by 2 hours of passive ventilation; or

(vi) Twenty-four hours with no ventilation.

(4) The following Table 2 applies to paragraphs (c)(1), (2), and (3) of this section.



Table 2.—Greenhouse Entry Restrictions Associated With Pesticide Applications

A. When a Pesticide is Applied:	B. Workers are Prohibited in:	C. Until:	D. After the Expiration of Time in Column C Until the Restricted-Entry Interval Expires, the Entry-Restricted Area is:
(1) As a fumigant	Entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area	The ventilation criteria of paragraph (c)(3) of this section are met	No entry restrictions after criteria in column C are met
(2) As a <ul style="list-style-type: none"> <li>(i) Smoke, or</li> <li>(ii) Mist, or</li> <li>(iii) Fog, or</li> <li>(iv) Aerosol</li> </ul>	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Entire enclosed area is the treated area
(3) Not in 1 or 2 above, and for which a respiratory protection device is required for application by the product labeling	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Treated area
(4) Not in 1, 2, or 3 above, and: <ul style="list-style-type: none"> <li>(i) From a height of greater than 12 in. from the planting medium, or</li> <li>(ii) As a fine spray, or</li> <li>(iii) Using a spray pressure greater than 40 psi</li> </ul>	Treated area plus 25 feet in all directions in the enclosed area	Application is complete	Treated area
(5) Otherwise	Treated area	Application is complete	Treated area

**§ 170.112 Entry restrictions.**

(a) *General restrictions.* (1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

(2) Entry-restricted areas in greenhouses are specified in column D in Table 2 under § 170.110(c)(4).

(3) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.

(4) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by paragraphs (c), (d), and (e) of this section uses the personal protective equipment specified in the product labeling for early-entry workers and follows any other requirements on the pesticide labeling regarding early entry.

(b) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer assures that both of the following are met:

(1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and

(2) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any

ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(c) *Exception for short-term activities.*

A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:

(1) No hand labor activity is performed.

(2) The time in treated areas under a restricted-entry interval for any worker does not exceed 1 hour in any 24-hour period.

(3) No such entry is allowed for the first 4 hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(4) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:

(i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(iii) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(iv) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(v) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one- or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(vi) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.



(vii) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent materials must not be worn for early-entry activities unless these materials are listed on the product labeling as acceptable for such use. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable for tasks with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant liners. However, once leather gloves have been worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(viii) When "chemical-resistant footwear" is specified by the product labeling, it shall be one of the following types of footwear: chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(ix) When "protective eyewear" is specified by the product labeling, it shall be one of the following types of eyewear: goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(x) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(5) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(6) The agricultural employer shall assure that:

(i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer's instructions.

(ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable Federal, State, and local regulations.

(iv) All personal protective equipment is cleaned according to manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(x) Each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.

(xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(7) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early-entry activity without implementing, when appropriate, measures to prevent heat-related illness.

(8) During any early-entry activity, the agricultural employer shall provide a decontamination site in accordance with § 170.150.

(9) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.

(d) *Exception for an agricultural emergency.* (1) An "agricultural emergency" means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the

agricultural employer has no control, and which requires entry into a treated area during a restricted-entry interval, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss.

(2) A worker may enter a treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency, if the agricultural employer assures that all the following criteria are met:

(i) A State, Tribal, or Federal Agency having jurisdiction declares the existence of circumstances that could cause an agricultural emergency on that agricultural establishment.

(ii) The agricultural employer determines the agricultural establishment is subject to the circumstances declared under paragraph (d)(2)(i) of this section that result in an agricultural emergency meeting the criteria of paragraph (d)(1) of this section.

(iii) The requirements of paragraphs (c)(3) through (9) of this section are met.

(e) *Exception requiring Agency approval.* The Agency may, in accordance with paragraphs (e)(1) through (3) of this section, grant an exception from the requirements of this section. An exception may be withdrawn in accordance with paragraph (e)(6) of this section.

(1) *Requesting an exception.* A request for an exception must be submitted to the Director, Office of Pesticide Programs (H-7501C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and must be accompanied by two copies of the following information:

(i) The name, address, and telephone number of the submitter.

(ii) The time period for which the exception is requested.

(iii) A description of the crop(s) and specific crop production task(s) for which the exception is requested. Such a description must include an explanation as to the necessity of applying pesticides of a type and at a frequency such that the restricted-entry interval would interfere with necessary and



time-sensitive hand labor tasks for the period for which the exception is sought.

(iv) A description of the geographic area for which the exception is requested. If the exception request is for a limited geographic area, the explanation must include a description as to why the circumstances of exposure or economic impact resulting from the prohibition of routine hand labor tasks during the restricted-entry interval are unique to the geographic area named in the exception.

(v) An explanation as to why, for each requested crop-task combination, alternative practices would not be technically or financially viable. Such alternative practices might include: rescheduling the pesticide application or hand labor activity; using a non-chemical pest control alternative; using an alternative to the hand labor tasks, such as machine cultivation; or substituting a pesticide with a shorter restricted-entry interval. This information should include estimates or data on per acre revenue and cost of production for the crop and area for which the exception is requested. These estimates or data should include: the situation prior to implementation of this final rule, the situation after implementation of this final rule if the exception is not granted, the situation after implementation of this final rule if the exception is granted, and specific information on individual factors which cause differences in revenues and costs among the three situations.

(vi) A description or documentation of the safety and feasibility of such an exception, including, but not limited to, the feasibility of performing the necessary hand labor activity while wearing the personal protective equipment required for early entry for the pesticide(s) expected to be applied, the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, any suggested methods of reducing the worker's exposure, and any other mitigating factors, such as the availability of running water for routine and emergency decontamination and mechanical devices that would reduce the workers' contact with the treated surfaces. The information should include the costs associated with early-entry, such as decontamination facilities, special information and training for the workers, heat stress avoidance procedures, and provision, inspection, cleaning, and maintenance of personal protective equipment. EPA will not grant exceptions where the costs of early

entry equal or exceed the expected loss in value of crop yield or quality.

(2) *Notice of receipt.* (i) When a request for an exception is submitted to the Agency along with all of the information required in paragraph (e)(1) of this section, the Agency shall issue a notice in the *Federal Register* stating that an exception is being considered, describing the nature of the exception, and allowing at least 30 days for interested parties to comment.

(ii) If a request for an exception is submitted to the Agency without all of the information required in paragraph (e)(1) of this section, the Agency shall return the request to the submitter.

(3) *Exception decision.* EPA will publish in the *Federal Register* its decision whether to grant the request for exception. EPA will base its decision on whether the benefits of the exception outweigh the costs, including the value of the health risks attributable to the exception. If the exception is granted, the notice will state the nature of and reasons for the exception.

(4) *Presumptive denial.* (i) Except as provided in paragraph (e)(4)(ii) of this section, persons requesting an exception may assume that the exception has been denied if EPA has not issued its decision whether to grant the exception within 9 months from the comment-closure date specified in the *Federal Register* notice in which the Agency announced, in accordance with paragraph (e)(2) of this section, that it would consider the exception.

(ii) Persons requesting an exception may not assume that the request has been denied as provided by paragraph (e)(4)(i) of this section if the Agency has taken action to extend its review period for a specified time interval due to the complexity of the exception request or to the number of exception requests concurrently under Agency review. EPA shall state the reason(s) for the delay in issuing a decision on the exception request. A notice of such an action may be published in the *Federal Register* or persons who requested the exception may be directly notified of the action.

(5) *Agricultural employer duties.* When a worker enters a treated area during a restricted-entry interval under an exception granted under paragraph (e) of this section, the agricultural employer shall assure that the requirements of paragraphs (c)(3) through (9) of this section are met, unless the notice granting the exception specifically indicates otherwise.

(6) *Withdrawing an exception.* An exception may be withdrawn by the Agency at any time if the Agency receives poisoning information or other

data that indicate that the health risks imposed by this early-entry exception are unacceptable or if the Agency receives other information that indicates that the exception is no longer necessary or prudent. If the Agency determines that an exception should be withdrawn, it will publish a notice in the *Federal Register*, stating the basis for its determination. Affected parties would then have 30 days to request a hearing on the Agency's determination. The exception, however, would be discontinued as of the date specified by EPA in the notice, which may include any of the 30-day period and the time required for any subsequent hearing process. Thereafter the Agency will decide whether to withdraw the exception and will publish a notice in the *Federal Register* stating its decision.

#### § 170.120 Notice of applications.

(a) *Notification to workers of pesticide applications in greenhouses.* The agricultural employer shall notify workers of any pesticide application in the greenhouse in accordance with this paragraph.

(1) All pesticide applications shall be posted in accordance with paragraph (c) of this section.

(2) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall also provide oral notification of the application to the worker in accordance with paragraph (d) of this section.

(3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:

(i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain in, or pass through the greenhouse; or

(ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by paragraphs (d)(1) through (3) of this section.

(b) *Notification to workers on farms, in nurseries, or in forests of pesticide applications.* The agricultural employer shall notify workers of any pesticide application on the farm or in the nursery or forest in accordance with this paragraph.

(1) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall post signs in accordance with paragraph (c) of this section and shall provide oral notification of the



application to the worker in accordance with paragraph (d) of this section.

(2) For any pesticide other than those for which the labeling requires both posting and oral notification of applications, the agricultural employer shall give notice of the application to the worker either by the posting of warning signs in accordance with paragraph (c) of this section or orally in accordance with paragraph (d) of this section, and shall inform the workers as to which method of notification is in effect.

(3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:

(i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain

in, or pass through on foot the treated area or any area within 1/4 mile of the treated area; or

(ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by (d)(1) through (3) of this section.

(c) *Posted warning signs.* The agricultural employer shall post warning signs in accordance with the following criteria:

(1) The warning sign shall have a background color that contrasts with red. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. Letters for all words must be

clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. A black-and-white example of a warning sign meeting these requirements, other than the size requirements, follows:

BILLING CODE 6560-50-F



**DANGER**  
**PESTICIDES**

**PELIGRO**  
**PESTICIDAS**



**KEEP OUT**  
**NO ENTRE**



(2) The sign shall be at least 14 inches by 16 inches in size, and the letters shall be at least 1 inch in height unless a smaller sign and smaller letters are necessary because the treated area is too small to accommodate a sign of this size. If a smaller sign is used, it must meet the proportions and other requirements described in paragraph (c)(1) of this section.

(3) On farms and in forests and nurseries, the signs shall be visible from all usual points of worker entry to the treated area, including at least each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

(4) In greenhouses, the signs shall be posted so they are visible from all usual points of worker entry to the treated area including each aisle or other walking route that enters the treated area. When there are no usual points of worker entry to the treated area, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

(5) The signs shall:

(i) Be posted no sooner than 24 hours before the scheduled application of the pesticide.

(ii) Remain posted throughout the application and any restricted-entry interval.

(iii) Be removed within 3 days after the end of the application and any restricted-entry interval and before agricultural-worker entry is permitted, other than entry permitted by § 170.112.

(6) The signs shall remain visible and legible during the time they are posted.

(7) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry, other than entry permitted by § 170.112, is prohibited for the entire area while the signs are posted.

(d) *Oral warnings.* The agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning shall consist of:

(1) The location and description of the treated area.

(2) The time during which entry is restricted.

(3) Instructions not to enter the treated area until the restricted-entry interval has expired.

#### § 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) *Required information.* The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

#### § 170.124 Notice of applications to handler employers.

Whenever handlers who are employed by a commercial pesticide handling establishment will be performing pesticide handling tasks on an agricultural establishment, the agricultural employer shall provide to the handler employer, or assure that the handler employer is aware of, the following information concerning any areas on the agricultural establishment that the handler may be in (or may walk

within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:

(a) Specific location and description of any such areas; and

(b) Restrictions on entering those areas.

#### § 170.130 Pesticide safety training.

(a) *General requirement—(1) Agricultural employer assurance.* The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

(2) *Requirement for workers performing early-entry activities.* Before a worker enters a treated area on the agricultural establishment during a restricted-entry interval to perform early-entry activities permitted by § 170.112 and contacts anything that has been treated with the pesticide to which the restricted-entry interval applies, including but not limited to, soil, water, or surfaces of plants, the agricultural employer shall assure that the worker has been trained.

(3) *Requirement for other agricultural workers—(i) Training before the 6th day of entry.* Except as provided in paragraph (a)(2) of this section, before the 6th day that a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect, the agricultural employer shall assure that the worker has been trained.

(ii) *Exception for first 5-year period.* Until October 20, 1997, and except as provided in paragraph (a)(2) of this section, before the 16th day that a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect, the agricultural employer shall assure that the worker has been trained. After October 20, 1997, this exception no longer applies.

(b) *Exception.* A worker who is a currently certified as an applicator of restricted-use pesticides under part 171 of this chapter or who satisfies the training requirements of part 171 of this chapter or who satisfies the handler training requirements under § 170.230(c) need not be trained under this section.

(c) *Training programs.* (1) General pesticide safety information shall be



presented to workers either orally from written materials or audiovisually. The information must be presented in a manner that the workers can understand (such as through a translator) using nontechnical terms. The presenter also shall respond to workers' questions.

(2) The person who conducts the training shall meet at least one of the following criteria:

- (i) Be currently certified as an applicator of restricted-use pesticides under part 171 of this chapter; or
- (ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or
- (iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction; or

(iv) Satisfy the training requirements in part 171 of this chapter or in § 170.230(c).

(3) Any person who issues an EPA-approved Worker Protection Standard worker training certificate must assure that the worker who receives the training certificate has been trained in accordance with (c)(4) of this section.

(4) The training materials shall convey, at a minimum, the following information:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eyeflushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this subpart designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(d) *Verification of training.* (1) Except as provided in paragraph (d)(2) of this

section, if the agricultural employer assures that a worker possesses an EPA-approved Worker Protection Standard worker training certificate, then the requirements of paragraph (a) of this section will have been met.

(2) If the agricultural employer is aware or has reason to know that an EPA-approved Worker Protection Standard worker training certificate has not been issued in accordance with this section, or has not been issued to the worker bearing the certificate, or the training was completed more than 5 years before the beginning of the current month, a worker's possession of that certificate does not meet the requirements of paragraph (a) of this section.

#### § 170.135 Posted pesticide safety information.

(a) *Requirement.* When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the following basic pesticide safety concepts:

(1) Help keep pesticides from entering your body. At a minimum, the following points shall be conveyed:

(i) Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(2) There are Federal rules to protect workers and handlers, including a requirement for safety training.

(c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be

on the safety poster or displayed close to the safety poster.

(2) The agricultural employer shall inform workers promptly of any change to the information on emergency medical care facilities.

(d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers.

(2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by workers and where workers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.

(e) *Accessibility.* Workers shall be informed of the location of the information and shall be allowed access to it.

(f) *Legibility.* The information shall remain legible during the time it is posted.

#### § 170.150 Decontamination.

(a) *Requirement.* If any worker on an agricultural establishment performs any activity in an area where, within the last 30 days, a pesticide has been applied or a restricted-entry interval has been in effect and contacts anything that has been treated with the pesticide, including, but not limited to, soil, water, or surfaces of plants, the agricultural employer shall provide, in accordance with this section, a decontamination site for washing off pesticide residues.

(b) *General conditions.* (1) The agricultural employer shall provide workers with enough water for routine washing and emergency eyeflushing. At all times when the water is available to workers, the employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(2) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eyeflushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.

(3) The agricultural employer shall provide soap and single-use towels at each decontamination site in quantities sufficient to meet workers' needs.

(4) To provide for emergency eyeflushing, the agricultural employer shall assure that at least 1 pint of water is immediately available to each worker who is performing early-entry activities permitted by § 170.112 and for which the pesticide labeling requires protective eyewear. The eyeflush water shall be



carried by the early-entry worker, or shall be on the vehicle the early-entry worker is using, or shall be otherwise immediately accessible.

(c) *Location.* (1) The decontamination site shall be reasonably accessible to and not more than 1/4 mile from where workers are working.

(2) For worker activities performed more than 1/4 mile from the nearest place of vehicular access:

(i) The soap, single-use towels, and water may be at the nearest place of vehicular access.

(ii) The agricultural employer may permit workers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water at the decontamination site located at the nearest place of vehicular access.

(3) The decontamination site shall not be in an area being treated with pesticides.

(4) The decontamination site shall not be in an area that is under a restricted-entry interval, unless the workers for whom the site is provided are performing early-entry activities permitted by § 170.112 and involving contact with treated surfaces and the decontamination site would otherwise not be reasonably accessible to those workers.

(d) *Decontamination after early-entry activities.* At the end of any exposure period for workers engaged in early-entry activities permitted by § 170.112 and involving contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants, the agricultural employer shall provide, at the site where the workers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the workers may wash thoroughly.

#### § 170.160 Emergency assistance.

If there is reason to believe that a person who is or has been employed on an agricultural establishment to perform tasks related to the production of agricultural plants has been poisoned or injured by exposure to pesticides used on the agricultural establishment, including, but not limited to, exposures from application, splash, spill, drift, or pesticide residues, the agricultural employer shall:

(a) Make available to that person prompt transportation from the agricultural establishment, including any labor camp on the agricultural establishment, to an appropriate emergency medical facility.

(b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:

(1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.

(2) Antidote, first aid, and other medical information from the product labeling.

(3) The circumstances of application or use of the pesticide on the agricultural establishment.

(4) The circumstances of exposure of that person to the pesticide.

#### Subpart C—Standard for Pesticide Handlers

##### § 170.202 Applicability of this subpart.

(a) *Requirement.* Except as provided by paragraph (b) of this section, this subpart applies when any pesticide is handled for use on an agricultural establishment.

(b) *Exceptions.* This subpart does not apply when any pesticide is handled for use on an agricultural establishment in the following circumstances:

(1) For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.

(2) On livestock or other animals, or in or about animal premises.

(3) On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.

(4) On plants that are in ornamental gardens, parks, and public or private lawns and grounds and that are intended only for aesthetic purposes or climatic modification.

(5) In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use.

(6) For control of vertebrate pests.

(7) As attractants or repellents in traps.

(8) On the harvested portions of agricultural plants or on harvested timber.

(9) For research uses of unregistered pesticides.

(c) *Exemptions.* For the purposes of this subpart, owners of agricultural establishments need not assure that the protections in §§ 170.210(b) and (c), 170.222, 170.230, 170.232, 170.234, 170.235, 170.240(e) through (g), 170.250, and 170.260 are provided to themselves or to members of their immediate family who

are performing handling tasks on their own agricultural establishments. However, they must provide any protections required by these sections to other handlers and other persons who are not members of their immediate family, and are encouraged to provide the protections to themselves and members of their families.

##### § 170.210 Restrictions during applications.

(a) *Contact with workers and other persons.* The handler employer and the handler shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.

(b) *Handlers handling highly toxic pesticides.* The handler employer shall assure that any handler who is performing any handling activity with a product that has the skull and crossbones symbol on the front panel of the label is monitored visually or by voice communication at least every 2 hours.

(c) *Fumigant applications in greenhouses.* The handler employer shall assure:

(1) That any handler who handles a fumigant in a greenhouse, including a handler who enters the greenhouse before the acceptable inhalation exposure level or ventilation criteria have been met to monitor air levels or to initiate ventilation, maintains continuous visual or voice contact with another handler.

(2) That the other handler has immediate access to the personal protective equipment required by the fumigant labeling for handlers in the event entry into the fumigated greenhouse becomes necessary for rescue.

##### § 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) *Location, accessibility, and legibility.* The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.



(b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) *Required information.* The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

#### § 170.224 Notice of applications to agricultural employers.

Before the application of any pesticide on or in an agricultural establishment, the handler employer shall provide the following information to any agricultural employer for the establishment or shall assure that any agricultural employer is aware of:

(a) Specific location and description of the treated area.

(b) Time and date of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) Restricted-entry interval.

(e) Whether posting and oral notification are required.

(f) Any other product-specific requirements on the product labeling concerning protection of workers or other persons during or after application.

#### § 170.230 Pesticide safety training.

(a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

(b) *Exception.* A handler who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter or who satisfies the

training requirements of part 171 of this chapter need not be trained under this section.

(c) *Training programs.* (1) General pesticide safety information shall be presented to handlers either orally from written materials or audiovisually. The information must be presented in a manner that the handlers can understand (such as through a translator). The presenter also shall respond to handlers' questions.

(2) The person who conducts the training shall meet at least one of the following criteria:

(i) Be currently certified as an applicator of restricted-use pesticides under part 171 of this chapter; or

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or

(iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction.

(3) Any person who issues an EPA-approved Worker Protection Standard handler training certificate must assure that the handler who receives the training certificate has been trained in accordance with paragraph (c)(4) of this section.

(4) The pesticide safety training materials must convey, at a minimum, the following information:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this subpart that must be followed by handler

employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(d) *Verification of training.* (1) Except as provided in paragraph (d)(2) of this section, if the handler employer assures that a handler possesses an EPA-approved Worker Protection Standard handler training certificate, then the requirements of paragraph (a) of this section will have been met.

(2) If the handler employer is aware or has reason to know that an EPA-approved Worker Protection Standard handler training certificate has not been issued in accordance with this section, or has not been issued to the handler bearing the certificate, or the handler training was completed more than 5 years before the beginning of the current month, a handler's possession of that certificate does not meet the requirements of paragraph (a) of this section.

#### § 170.232 Knowledge of labeling and site-specific information.

(a) *Knowledge of labeling information.* (1) The handler employer shall assure that before the handler performs any handling activity, the handler either has read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to safe use of the pesticide, such as signal words, human hazard precautions, personal protective equipment requirements, first aid instructions, environmental precautions, and any additional precautions pertaining to the handling activity to be performed.

(2) The handler employer shall assure that the handler has access to the product labeling information during handling activities.

(b) *Knowledge of site-specific information.* Whenever a handler who is employed by a commercial pesticide handling establishment will be performing pesticide handling tasks on an agricultural establishment, the handler employer shall assure that the handler is aware of the following information concerning any areas on the agricultural establishment that the handler may be in (or may walk within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:



- (1) Specific location and description of any such areas; and
- (2) Restrictions on entering those areas.

#### § 170.234 Safe operation of equipment.

(a) The handler employer shall assure that before the handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment, including, when relevant, chemigation safety requirements and drift avoidance.

(b) The handler employer shall assure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(c) Before allowing any person to repair, clean, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the handler employer shall assure that pesticide residues have been removed from the equipment, unless the person doing the cleaning, repairing, or adjusting is a handler employed by the agricultural or commercial pesticide handling establishment. If pesticide residue removal is not feasible, the handler employer shall assure that the person who repairs, cleans, or adjusts such equipment is informed:

- (1) That such equipment may be contaminated with pesticides.
- (2) Of the potentially harmful effects of exposure to pesticides.
- (3) Of the correct way to handle such equipment.

#### § 170.235 Posted pesticide safety information.

(a) *Requirement.* When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the following basic pesticide safety concepts:

(1) Help keep pesticides from entering your body. At a minimum, the following points shall be conveyed:

- (i) Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(2) There are Federal rules to protect workers and handlers including a requirement for safety training.

(c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

(2) The handler employer shall inform handlers promptly of any change to the information on emergency medical care facilities.

(d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by handlers.

(2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by handlers and where handlers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.

(e) *Accessibility.* Handlers shall be informed of the location of the information and shall be allowed access to it.

(f) *Legibility.* The information shall remain legible during the time it is posted.

#### § 170.240 Personal protective equipment.

(a) *Requirement.* Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(b) *Definition.* (1) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant

aprons, chemical-resistant headgear, and protective eyewear.

(2) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(c) *Provision.* When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(1) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(2) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(3) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(4) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.

(5) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent material shall not be worn for handling activities unless such materials are listed on the product labeling as acceptable for such use.

(6) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(7) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.



(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(8) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.

(9) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly.

(10) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical resistant hood or a chemical-resistant hat with a wide brim.

(d) *Exceptions to personal protective equipment specified on product labeling*—(1) *Body protection*. (i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.

(ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.

(2) *Boots*. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) *Gloves*. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(4) *Closed systems*. If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in paragraphs (d)(4)(i) and (ii) of this section.

(i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Persons using a closed system to mix or load pesticides other than those

in paragraph (d)(4)(i) of this section or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(iii) Persons using a closed system that operates under pressure shall wear protective eyewear.

(iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.

(5) *Enclosed cabs*. If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in paragraphs (d)(5)(i) through (iv) of this section.

(i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a governmental agency to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.

(iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a governmental agency to provide respiratory protection equivalent to or greater than the vapor- or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.

(iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.

(6) *Aerial applications*—(i) *Use of gloves*. Chemical-resistant gloves shall be worn when entering or leaving an aircraft contaminated by pesticide residues. In the cockpit, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(ii) *Open cockpit*. Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.

(iii) *Enclosed cockpit*. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) *Crop advisors*. Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early-entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:

(i) Application has been completed for at least 4 hours.

(ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(e) *Use of personal protective equipment*. (1) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(2) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(f) *Cleaning and maintenance*. (1) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product



labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(2) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable Federal, State, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall be not be reused.

(3) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(4) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.

(5) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(6) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:

- (i) When breathing resistance becomes excessive.
- (ii) When the filter element has physical damage or tears.
- (iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(7) The handler employer shall assure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges shall be replaced:

(i) At the first indication of odor, taste, or irritation.

(ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(8) The handler employer shall inform any person who cleans or launders personal protective equipment:

- (i) That such equipment may be contaminated with pesticides.
- (ii) Of the potentially harmful effects of exposure to pesticides.
- (iii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(9) The handler employer shall assure that handlers have a clean place(s)

away from pesticide storage and pesticide use areas where they may:

- (i) Store personal clothing not in use.
- (ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(10) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(g) *Heat-related illness.* When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

#### § 170.250 Decontamination.

(a) *Requirement.* During any handling activity, the handler employer shall provide for handlers, in accordance with this section, a decontamination site for washing off pesticides and pesticide residues.

(b) *General conditions.* (1) The handler employer shall provide handlers with enough water for routine washing, for emergency eyeflushing, and for washing the entire body in case of an emergency. At all times when the water is available to handlers, the handler employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(2) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eye flushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.

(3) The handler employer shall provide soap and single-use towels at each decontamination site in quantities sufficient to meet handlers' needs.

(4) The handler employer shall provide one clean change of clothing, such as coveralls, at each decontamination site for use in an emergency.

(c) *Location.* The decontamination site shall be reasonably accessible to and not more than 1/4 mile from each handler during the handling activity.

(1) *Exception for mixing sites.* For mixing activities, the decontamination site shall be at the mixing site.

(2) *Exception for pilots.* The decontamination site for a pilot who is applying pesticides aerially shall be in

the airplane or at the aircraft's loading site.

(3) *Exception for handling pesticides in remote areas.* When handling activities are performed more than 1/4 mile from the nearest place of vehicular access:

(i) The soap, single-use towels, clean change of clothing, and water may be at the nearest place of vehicular access.

(ii) The handler employer may permit handlers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water at the decontamination site located at the nearest place of vehicular access.

(4) *Decontamination site in treated areas.* The decontamination site shall not be in an area being treated with pesticides or in an area under a restricted-entry interval, unless:

(i) The decontamination site is in the area where the handler is performing handling activities;

(ii) The soap, single-use towels, and clean change of clothing are in enclosed containers; and

(iii) The water is running tap water or is enclosed in a container.

(d) *Emergency eyeflushing.* To provide for emergency eyeflushing, the handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle or aircraft the handler is using, or shall be otherwise immediately accessible.

(e) *Decontamination after handling activities.* At the end of any exposure period, the handler employer shall provide at the site where handlers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly.

#### § 170.260 Emergency assistance.

If there is reason to believe that a person who is or has been employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks has been poisoned or injured by exposure to pesticides as a result of that employment, including, but not limited to, exposures from handling tasks or from application, splash, spill, drift, or pesticide residues, the handler employer shall:

(a) Make available to that person prompt transportation from the place of employment or the handling site to an appropriate emergency medical facility.



(b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:

(1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.

(2) Antidote, first aid, and other medical information from the product labeling.

(3) The circumstances of handling of the pesticide.

(4) The circumstances of exposure of that person to the pesticide.

[FR Doc. 92-20005 Filed 8-19-92; 10:31 am]

BILLING CODE 5560-50-F



**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 170**

[OPP-300164C; FRL-3793-1]

RIN 2070-AA49

**Worker Protection Standard; Hazard  
Information****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is a companion to a final rule, published elsewhere in this issue of the *Federal Register*, which revises regulations governing worker protection from agricultural pesticides and their residues. As a result of comments received during this rulemaking, EPA is proposing an additional modification to its Worker Protection Standard to provide information to covered workers that is substantially equivalent to that required under the Hazard Communication Standard promulgated by the Occupational Safety and Health Administration (OSHA). This proposal would add a requirement that specific hazard information be made available to agricultural workers and pesticide handlers concerning the pesticides to which they are exposed. This information would be in the form of fact sheets or Material Safety Data Sheets. EPA believes this modification would provide information to agricultural workers equivalent to that provided to other workers and would do much to avoid confusion among pesticide users as to their obligation for communicating pesticide hazard information to workers.

**DATES:** Written comments, data, and other evidence concerning the proposal should be submitted on or before October 20, 1992.

**ADDRESSES:** Comments should be submitted in triplicate and addressed to the Document Control Officer (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments should bear the document control number, OPP-300164C, and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday excluding legal holidays, at the OPP Document Control Office, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: James J. Boland, Acting Chief, Occupational Safety Branch (H7506C), Office of Prevention, Pesticides, and Toxic Substances, Environmental Protection Agency, 401 M St., SW.,

Washington, DC 20460. Office location and phone number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-305-7666.

**SUPPLEMENTARY INFORMATION:** In 1974, EPA promulgated the regulations found at 40 CFR part 170, which dealt with pesticide-related occupational safety and health of workers performing hand labor operations in fields during or after application of pesticides. As the result of changing conditions and an awareness of the shortcomings of part 170, EPA proposed to revise its worker protection regulations in 1988 (53 FR 25970; July 8, 1988) ("the NPRM"). A substantial number of comments were received as the result of this proposal, and the Agency is issuing the final rule elsewhere in this issue of the *Federal Register*. These revisions expand the scope of part 170 beyond coverage of workers performing hand labor operations in fields treated with pesticides to include a wider range of occupational exposures to agricultural pesticides. The regulations cover workers in or on farms, forests, nurseries, and greenhouses, as well as workers who handle (mix, load, and apply) pesticides at these locations. The revisions expand requirements for safety and health warnings about applications, use of personal protective equipment, and observation of entry restrictions, and add new provisions for training, decontamination, and emergency medical assistance.

As a result of the rulemaking revising part 170, EPA received many comments expressing concern about possible overlap or conflict between part 170 requirements and any requirements that might also be placed upon the regulated community by OSHA. Some comments expressed the opinion that part 170 should provide agricultural employees information about the chemicals to which they are exposed equivalent to the requirements of the OSHA Hazard Communication Standard. The Agency has reviewed the record underlying this rulemaking and believes that the revised part 170 provides protection at least the equivalent of the Hazard Communication Standard, with one exception. OSHA requires that hazard-specific information be made available to workers in the form of Material Safety Data Sheets (MSDSs). Based on the comments in the record, EPA agrees with the need for providing hazard specific information to workers exposed to those hazards. EPA proposes to require that employees be given access to pesticide-specific information in the form of fact sheets approved by EPA or State agencies concerning specific

pesticides; alternatively, this requirement would be met if employees were given access to MSDSs for the pesticides to which they are exposed.

**I. Relationship Between EPA's Worker  
Protection Standard and OSHA's  
Hazard Communication Standard**

OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200) requires employers to train employees in the nature, detection, and avoidance of chemical hazards in the workplace; maintain MSDSs for all hazardous chemicals and provide them on request; and label chemical containers. The HCS was promulgated in 1983 to cover manufacturing workers; in 1987, it was extended to cover all workers, including agricultural workers (52 FR 31852; August 24, 1987) (29 CFR 1928.21).

Although the NPRM for EPA's Worker Protection Standard (WPS) discussed the relationship between the proposed decontamination requirements and OSHA's Field Sanitation Standard (29 CFR 1928.110), it did not address the relationship between part 170 and the HCS. Nevertheless, the Agency received a considerable number of public comments on this issue in response to the NPRM. Comments came primarily from grower groups, the Cooperative Extension Service, worker representatives, and State lead agencies. Comments noted that the HCS recently had become applicable to agricultural employers and contained requirements, such as training and notification, that appeared to be similar to measures in EPA's proposal. Comments claimed either that the two regulations were duplicative or they were inconsistent. One comment pointed to inconsistencies between some MSDSs and the corresponding pesticide labels in the hazard information they provide. Many growers believed that there could be confusion in dealing with more than one "oversight agency," unnecessary compliance costs, and extra paperwork burdens. One comment stated that, by including agriculture in its HCS, OSHA was "interfering" with EPA's pesticide program.

The comments proposed varying solutions to the perceived inconsistencies. The majority stated that EPA and OSHA should hold discussions to clarify the "regulatory boundaries" between the two agencies, noting that confusion among the public, enforcement difficulties, and litigation are likely if the relationship is not clarified. One comment suggested a Memorandum of Understanding between EPA and OSHA. Two comments requested that EPA delay



implementation of part 170 until an agreement with OSHA was reached. Many comments stated that OSHA should "stay out," and that only EPA should regulate hazard communication in agriculture. In support of this view, comments stated that the Cooperative Extension Service "traditionally works well" with EPA; that EPA has a history of putting resources and priority in its pesticide program; that the revised part 170 would include adequate hazard communication for agricultural workers; that the HCS is primarily a standard for manufacturing while part 170 is "specifically designed" for the agricultural setting; that OSHA enforcement is limited to larger farms because of a current appropriations rider; that Congress intended FIFRA to regulate pesticide-hazardous materials; that OSHA has no Indian reservation enforcement policy; and that labels are a "better source of information" than the MSDS. One comment stated that only one agency should regulate, without stating which one. Another suggested that OSHA adopt EPA's proposed regulations as hazard communication requirements for the agricultural sector. One comment stated that EPA should "yield" to the HCS and "fill in elsewhere" as necessary, while another felt that OSHA should cover all aspects of worker safety. Several comments proposed a specific division of regulatory authority between the agencies, under which the EPA would cover workers at agricultural pesticide use sites, including both handlers and workers who are exposed to residues, while OSHA would cover "downstream" nonagricultural workers, those exposures to residues other than at agricultural use sites.

While pesticide users anticipated confusion over which rules they should follow, some State agencies were concerned about the division of responsibility for programs and enforcement at the State government level. The situation would be complicated because a given State could be participating in an EPA State Plan, an OSHA State Plan, both, or neither. One State agency asked for either a formal jurisdictional division at the Federal level which each State would be required to implement, or an alternative "flexible approach" allowing cooperation among pesticide lead agencies and occupational safety and health agencies in each State. One comment stated that regardless of which agency issued regulations, enforcement would be "complaint-driven" rather than based on inspections, and was concerned that EPA did not have an

OSHA-type complainant protection system.

Comments from the Texas Department of Agriculture (TDA), the lead agency in that State for pesticides, identified the difficulty that a given situation may present. In 1988, the State passed an Agricultural Worker Hazard Communication Act pursuant to which TDA developed training programs and promulgated implementing regulations, actions consistent with the Federal-State relationship set forth by FIFRA section 24. Because Texas does not have an approved OSHA State Plan, under the OSHA Act the Federal HCS is applicable in that State, and any similar State regulations are preempted. Because of the similarity between the new Texas law and the Federal HCS, some persons in that State have suggested that the Texas law and regulations may be preempted by the HCS. TDA has urged both OSHA and EPA to clarify their jurisdictional relationship in a manner that would permit TDA to implement its programs and enforce its regulations without the present ambiguity.

During the public comment period on EPA's NPRM for the Worker Protection Standard, OSHA held a public hearing and requested public comment on several issues associated with the HCS (53 FR 29822; August 8, 1988), including the question of possible preemption of the HCS by EPA's pesticide regulations. EPA has reviewed the relevant comments in OSHA's HCS rulemaking docket and was represented at the hearing. Substantially the same concerns were raised in comments on the two rulemakings, and similar solutions were proposed. A number of organizations submitted written comments to both agencies.

EPA submitted its written comments to the OSHA Hazard Communication Standard docket. The Agency acknowledged that both agencies had attempted to regulate occupational pesticide exposure under their respective statutes, and pointed out that significant public concern existed over the recent actions of both agencies in this area. EPA identified problems with the view of jurisdictional issues expressed by OSHA in its *Federal Register* notice, as related to some aspects of EPA's pesticide program, the implications of the proposed revisions to part 170, the question of preemption, and possible alternative approaches. EPA concluded that "[g]iven the shared regulatory purpose, the similarity of the proposed requirements, and the justifiable public concern over regulatory duplication, EPA believes

that the time is ripe for the two agencies to address, in as concrete a fashion as possible, the issues raised by their mutual jurisdiction" (OPP Docket 300164-C373).

In late 1988, the two agencies formed a working group to address these issues. The United States Department of Agriculture requested and was granted permission to participate because of its close involvement in matters related to the use of agricultural pesticides. The working group met several times. After reviewing drafts of the final Worker Protection Standard and this NPRM, OSHA's view is that EPA's final rule, when promulgated and enforced, will address essentially the same information transmittal issues covered by the HCS. OSHA also concluded that when this NPRM is promulgated, EPA will have approximately the same requirements as the HCS. In view of this similarity, OSHA will defer to EPA and will not enforce the HCS with regard to employees exposed to pesticides who are covered by the Worker Protection Standard. However, OSHA will continue to enforce the HCS for other hazardous chemicals to which employees are exposed in agriculture.

EPA fully supports OSHA's efforts to assure that persons exposed to chemical hazards are provided with information about those hazards; EPA pursues similar goals in its pesticide program. At the same time, EPA acknowledges the various public concerns expressed by growers, workers, States and others regarding the relationship between the revised part 170 and OSHA's HCS. EPA does not intend to require actions on the part of the regulated public that either duplicate or conflict with another agency's requirements intended to accomplish essentially the same purpose. FIFRA encourages cooperation between EPA and other Federal agencies and flexibility between Federal and State levels in the implementation of pesticide programs, as long as the overall goal of protection is met. EPA also supports such flexibility and cooperation among various agencies in a given State. In light of the differences among State pesticide and occupational health and safety programs, a single approach at the Federal level may not fit particular cases at the State level.

EPA has elected to proceed with the final Worker Protection Standard published elsewhere in this issue of the *Federal Register*, believing it is unreasonable to delay issuance of all part 170 protective measures, including those unrelated to hazard communication. The Agency is proposing in this document to amend



part 170, as soon as practicable following public notice and comment, to provide pesticide hazard communication for agricultural workers and pesticide handlers on agricultural sites that is at least the equivalent of OSHA's hazard communication provisions. EPA believes that its newly revised Worker Protection Standard, with modifications, would provide an appropriate vehicle for ensuring the communication of pesticide hazard information in the agricultural workplace, for a number of reasons.

First, EPA's final rule already includes a number of provisions that appear to accomplish a similar purpose as some of OSHA's hazard communication requirements. These include pesticide safety training for handlers and workers (§§ 170.130 and 170.230); display of a pesticide safety poster (§ 170.135); notification of the presence of pesticides in the workplace, including posted or oral warnings and the pesticide name and location of treated areas displayed at a central location (§§ 170.120, 170.122, 170.222); and access to and knowledge of pesticide labeling information by handlers (§ 170.232). The principal difference between OSHA's hazard communication program and EPA's current worker protection program is the right to written information about the specific hazards of pesticides present in the workplace, in the form of MSDSs.

Second, EPA's hazard communication requirements would be tailored to fit the context of agricultural-pesticide use, rather than being generic standards for all occupational sectors as is the case with OSHA's Hazard Communication Standard.

Third, incorporation of a full agricultural hazard communication program into part 170 would do much to alleviate confusion and concern in the regulated community over possible conflicts and duplication between the agencies.

Fourth, direct EPA involvement in agricultural pesticide hazard communication could assist States such as Texas that desire to implement their own State-specific hazard communication program in agriculture. Under FIFRA, more stringent State regulations are permissible. Under the OSHA Act, however, more stringent State regulations may be permitted, but in States without approved OSHA State plans, State regulations are preempted.

EPA does not propose to incorporate OSHA's hazard communication program word for word, primarily because the Agency believes that its part 170 requirements are more suited to the agricultural workplace.

Therefore, EPA proposes to modify part 170 in only one respect to meet the

objectives of OSHA's HCS. Specifically, EPA proposes to include a requirement to make available written pesticide-specific hazard information on request to pesticide handlers and to workers potentially exposed to pesticide residues. The Agency proposes to add new §§ 170.133 and 170.233, entitled "Hazard Information," to subpart B, Standard for Agricultural Workers, and subpart C, Standard for Pesticide Handlers, respectively. The proposed pesticide-specific hazard information requirement has been adapted from OSHA's MSDS requirement (29 CFR 1910.1200(g)) and specifies the type and form of written information (MSDS or fact sheet) and the obligation to obtain, to maintain, and to make available the information to handlers and workers.

Some commenters stated that the typical MSDS is not written with the agricultural workplace in mind and contains information that is either difficult to understand or irrelevant to agricultural workers. In response, the Agency has proposed that an alternative form of hazard information also be acceptable, i.e., a fact sheet that contains specific types of relevant information. These fact sheets would be either prepared by or approved by a Federal or State agency. One advantage of fact sheets is that they might be designed to communicate product-specific risk and hazard-reduction information to agricultural workers and pesticide handlers through the use of nontechnical and often comparative terms. The proposed fact sheets allow the development of one fact sheet for a pesticide, i.e., malathion or 2,4-D. The Agency welcomes comments as to whether the fact sheets should be narrower in focus, such as requiring different fact sheets for different formulations of the same active ingredient.

The Agency is considering a range of options concerning the format and content of the fact sheets. One option is to require all the information currently required in an MSDS. Another option is to require that the fact sheet contain only the MSDS information that would be most useful to agricultural workers and pesticide handlers, allowing them to obtain other information from an MSDS, which also would be made accessible. Still another option is to refer users to the pesticide product labeling for certain information, such as personal protective equipment requirements and restricted-entry intervals and to require that both the labeling and the fact sheet be made accessible to agricultural workers and pesticide handlers. The Agency seeks comment as to the appropriate format and content of the fact sheets.

The content being proposed for the fact sheets would encourage the use of nontechnical language and eliminate the requirement for some highly technical data that might be of little use to agricultural workers and pesticide handlers. The Agency is inclined to minimize the technical specificity of the information in favor of language more easily interpreted by agricultural workers and pesticide handlers. Specifically, the Agency is considering requiring that technical information be expressed through the use of comparative terms. The Agency seeks information and assistance from interested parties as to how this might best be accomplished and seeks specific comments as to what range of numeric values for each quantitative property of the pesticide would be appropriate for each comparative term. In the case of vapor pressure, for example, what ranges of vapor pressure values should be characterized as highly volatile, moderately volatile, slightly volatile, or relatively nonvolatile?

Other physical characteristics that might be best expressed in comparative terms include flammability, explosivity, solubility, stability (or shelf life), and, in some instances, compatibility. However, this latter characteristic could be specifically described either by listing products the pesticide is known to be compatible with or by listing products the pesticide is known to be incompatible with.

At least two possible chart-style presentations might be appropriate for fact sheets. One is the National Fire Protection Association Hazard Rating chart, which could be used to describe the fire hazards. These ratings are keyed to a numeric scale from 0 to 4 as follows: 0 = least, 1 = slight, 2 = moderate, 3 = high, and 4 = severe hazard. Health hazard, fire hazard, and reactivity hazard are rated. Another chart that might be appropriate for adaptation is the SARA Title III Hazard Classification chart, which uses a "yes/no" key to indicate whether the chemical presents an immediate (acute) health, delayed (chronic) health, fire, sudden release of pressure, or reactivity hazard. The Agency solicits comment on chart-style presentations in general and on the utility of these two specific examples.

The Agency is inclined to require simple, standardized phrases to describe the toxicological characteristics of the chemicals. The usual technical terminology, for example: "Toxicology: Acute Exposure: Skin - Rabbit, 2.0 mg/kg" may not communicate interpretable information to most people, including most agricultural workers and pesticide



handlers. The Agency believes that standard descriptive phrases should be limited to three or four per adverse effect, such as: (1) Skin or eye irritants could be classified as: severe irritant, moderate irritant, slight irritant, or relatively non-irritating; (2) Systemic toxicity through swallowing, through inhaling, or through absorption through the skin could be classified as: highly toxic, moderately toxic, slightly toxic, or relatively nontoxic; (3) Sensitization potential could be classified as: severe sensitizer, moderate sensitizer, slight sensitizer, or relatively nonsensitizing. These simple terms could be easily learned by agricultural workers and pesticide handlers who are occupationally exposed to pesticides. The Agency is also considering whether to associate a "signal word," i.e., danger, warning, caution, with each of these routes of entry in addition to the comparative phrase. For example: "Warning—moderately toxic if swallowed; Caution—slightly irritating to the eyes," etc. The LD<sub>50</sub> or LC<sub>50</sub> or other quantitative values could also appear on the fact sheet, but standard descriptive terms would be mandatory.

The Agency is also inclined to require that fact sheets express delayed-onset toxicity concerns in a comparative manner and to require that the fact sheet simply state whether any government agency or recognized medical organization has listed the pesticide or any of its ingredients as a potential carcinogen, rather than list each agency or organization separately. In any case, EPA is inclined to require that fact sheets incorporate simplified language for these effects, such as: tumor-causing in lieu of oncogenic; birth-defect-causing in lieu of teratogenic; injury to fetus in lieu of embryotoxic or fetotoxic; injury to pregnant females in lieu of maternally toxic; injury to genes or chromosomes in lieu of genotoxic or mutagenic; injury to brain and nervous system in lieu of neurotoxic; immune system injury in lieu of immunosuppression; and heart/lung injury in lieu of cardiopulmonary impairment.

Information on the fact sheet that is directed specifically to medical personnel, such as antidotes or appropriate medical amelioration procedures, could retain the precise medical terminology. However, for the sections on symptoms of overexposure, medical conditions aggravated by exposure, and emergency and first aid procedures for each applicable route of exposure, the Agency is inclined to require the use of simplified language. For example, the following terms might be substituted for the more precise

medical terminology: tears in lieu of lacrimation; rash or reddening in lieu of erythema; cracking in lieu of fissuring; peeling or scaling in lieu of desquamation; unconsciousness or stupor in lieu of narcosis; swelling in lieu of edema; tissue damage in lieu of necrosis; giddiness, headache, dizziness, and blurred vision in lieu of central nervous system depression; slow heart rate in lieu of bradycardia; rapid heart rate in lieu of tachycardia; high blood pressure in lieu of hypertension; low blood pressure in lieu of hypotension; low body temperature in lieu of hypothermia; cramps, diarrhea, nausea or vomiting in lieu of gastrointestinal irritation; loss of appetite in lieu of anorexia; muscle pains in lieu of myalgia; bluish skin color in lieu of cyanosis; yellowish skin color in lieu of jaundice; lack of coordination in lieu of ataxia; shortness of breath or difficulty breathing in lieu of dyspnea; rapid breathing in lieu of tachypnea; muscle spasms in lieu of tetany or myotonia; pinpoint pupil in lieu of miosis; runny nose in lieu of rhinorrhea; blood in feces in lieu of melena; blood in urine in lieu of hematuria; irritated stomach in lieu of gastritis; drooling or excess saliva in lieu of salivation; abnormality or irregularity in lieu of anomaly; poisoning in lieu of toxification; and plenty or large in lieu of copious. The Agency solicits comments on this approach and suggestions as to possible changes in these proposed substitutes as well as suggestions as to similar terms that might be simplified.

The Agency is considering allowing the fact sheets to indicate which exposure-reduction measures have been established for the product, without specifying the details of those measures. The fact sheet would then indicate how the pesticide handlers or agricultural workers should assess whether those exposure-reduction measures have been met. For example, the fact sheet would indicate that a restricted-entry interval has been set for the product and that workers should not enter the area immediately after application and until the supervisor indicates that the restricted-entry period has expired. If another type of exposure limitation has been established for the product, such as an OSHA Permissible Exposure Limit (PEL), the fact sheet might state that a standard had been established for exposures to the product through inhalation and direct that enclosed treatment areas should be tested before workers reenter those areas. If ventilation criteria or other criteria have been established for such enclosed treatment areas, these should be listed

in the fact sheet. For example, the fact sheet might state: "Stay out of enclosed treatment areas until they have been mechanically ventilated for at least 2 hours or until a test indicates that the levels of pesticide product in the air are no longer hazardous."

The Agency is also inclined to require that any environmental effects listed on the fact sheets be expressed in simple, standardized comparative phrases. The existing terminology on some MSDSs, for example: "48-hr EC<sub>50</sub> Daphnia Magna: 22 mg/l," may not communicate interpretable information to the audience targeted by the fact sheet. As an alternative, EPA suggests the use of the same language as for systemic toxicity to humans, i.e., highly toxic, moderately toxic, slightly toxic, or relatively nontoxic. The environmental categories could include, as appropriate, an indication of the relative toxicity of the pesticide to fish, other aquatic organisms, birds, mammals, bees, reptiles and amphibians, and invertebrate organisms.

If personal protective equipment, engineering controls, and other special workplace practices are actually listed on the fact sheet rather than referenced by the fact sheet to the labeling or MSDS, the Agency is inclined to require standardization of terminology in describing such requirements and practices. This requirement would be designed to reduce confusion that may be caused by fact sheets that appear to be inconsistent with the requirements on pesticide labeling. For example, the following terms might be required: (1) Personal protective equipment in lieu of protective clothing or protective clothing and equipment; (2) coverall in lieu of full body suit or protective clothing; (3) chemical-resistant in lieu of chemical-impermeable or impermeable; (4) specifying one or more protective types of chemical-resistant materials, such as neoprene, natural rubber, butyl rubber, PVC, nitrile, plastic laminate, etc.; (5) specifying "waterproof" only when any plastic or rubber is resistant to the chemical; (6) protective eyewear, such as goggles, face shield or safety glasses in lieu of other eyewear terms; (7) protective footwear, such as boots, shoe covers or shoes in lieu of other footwear terms; (8) dust/mist respirator in lieu of dust respirator or mask; and (9) specifying a type of respirator—either dust/mist, vapor-removing, or supplied air—in lieu of respirator, organic-vapor respirator, air-purifying respirator, or pesticide respirator.

In addition, the Agency is inclined to require a standardized format for the presentation of such requirements and



practices, such as: (1) Body: [specify: "coverall" or "chemical-resistant protective suit" or "long-sleeved shirt and long pants" and/or "chemical-resistant apron" as applicable]; (2) Hands: [specify type of glove material or use "waterproof" to indicate any plastic or rubber will suffice]; (3) Feet: [specify type of footwear material or use "waterproof" to indicate that any plastic or rubber material will suffice]; (4) Eyes: [specify "protective eyewear" or a particular type of eyewear, such as goggles]; (5) Lungs: [specify "dust/mist respirator" or "vapor-removing respirator approved for pesticides or organic vapors" or "air-supplied respirator"]].

The Agency seeks comment as to appropriate standardized language for describing various engineering controls, such as closed systems, enclosed cabs, and enclosed cockpits and for describing various workplace practice recommendations or requirements, such as cleaning and maintenance of personal protective equipment, washing hands and face frequently, etc.

The Agency solicits comment as to the appropriate means of conveying information about spill cleanup procedures and about disposal methods for excess pesticide and for pesticide containers. Such technical, product-specific information might be more appropriate for pesticide labeling or MSDSs than for fact sheets. On the other hand, unless pesticide labeling or MSDSs were also accessible to pesticide handlers and agricultural workers, at least some of this information would seem appropriate for fact sheets to avoid unacceptable risk of exposure in an emergency.

The Agency also solicits comment as to whether providing the pesticide product labeling should be an acceptable alternative or supplement to providing an MSDS or fact sheet. The Agency has several concerns about such an option. The pesticide product labeling may be unavailable to most agricultural workers. The labeling is often affixed to the product container and thus located in a pesticide storage area. The labeling may be contaminated or rendered partially unreadable during use of the container under normal field conditions. Furthermore, the Agency is concerned about information that is routinely included in MSDSs but that is not on the pesticide product labeling, such as information about delayed-onset adverse health effects and spill or leak cleanup procedures. However, the pesticide product labeling is a logical source of hazard information about the product and could be produced

separately from the container, which would make it more accessible. Another option is to require that both the labeling or MSDS and a fact sheet be made available. The Agency seeks comment as to whether pesticide labeling should be an acceptable alternative to MSDSs or fact sheets in the agricultural workplace or whether a fact sheet plus the pesticide labeling or MSDS should be required.

The Agency is also considering requiring or allowing the use of pictogram symbols on fact sheets to graphically convey crucial health and safety information to workers occupationally exposed to pesticides. The use of pictograms is a widely accepted and efficient means of conveying information to people. Workers/handlers exposed occupationally to agricultural pesticides have a wide range of language skills. Many workers/handlers speak and read a language other than English; others speak English, but cannot read it; still others speak and read English, but are unable to interpret the technical data being presented to them in the fact sheets. While some workers/handlers may have little difficulty deciphering highly technical terms, the Agency believes they constitute a small fraction of the workforce currently encompassed by the Worker Protection Standard.

Considerable study has been given to the use of easily understood international symbols for traffic control. While less study has been undertaken to develop such symbols for hazard communication such an approach could prove beneficial. For example, a pictogram could depict a drop of chemical on the skin of a hand or forearm with the words (or an additional symbol) in the upper corner of the pictogram indicating whether the chemical is slightly toxic, moderately toxic, or highly toxic by the dermal route. Some of these pictograms have already been developed or proposed; others would have to be created. The Agency solicits comments on the option of requiring or allowing pictograms on fact sheets and solicits examples of pictograms that might be appropriate.

The Agency is concerned that State or Federal agencies choosing to produce or to approve fact sheets should develop and employ specific standards for content and completeness under the general criteria in the rule. The Agency invites comment on the option of requiring that authority to approve fact sheets be contingent upon EPA approval and periodic reapproval of a plan by the organization proposing to operate such a process. Such a plan would describe the

criteria for approval, including topics to be covered, method of presentation, acceptable sources of information, and requirements for updating of fact sheets as new information becomes available.

The Agency believes that the economic impact of this proposal on agricultural entities will be negligible. Agricultural employers already are subject to OSHA's Hazard Communication Standard and must provide MSDSs on request. The fact sheet alternative may reduce this existing burden by creating a regulatory option that may be easier for employers to meet and that may benefit handlers and workers by providing hazard information in a more understandable form. Agricultural employers also will derive benefits from the consolidation of certain Federal hazard communication requirements under one agency, which will facilitate understanding and compliance.

The Agency believes that its proposal, when implemented, would address the public's concern about the relationship between OSHA's Hazard Communication Standard and EPA's Worker Protection Standard in a way that could be anticipated to reduce confusion among agricultural employers and ensure adequate communication of pesticide hazards to agricultural handlers and workers. EPA solicits comment on any aspect of the matters discussed in this proposal.

## II. Statutory Review

### A. U.S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this Notice of Proposed Rulemaking and the final rule (40 CFR Part 170) were provided to the Secretary of Agriculture on June 7, 1991. On March 27, 1992, the Secretary provided written comments. The Secretary had comments concerning hazard communication in connection with provisions in the Worker Protection Standard; however, none of those comments applied specifically to this NPRM.

### B. Congressional Committees

As required by FIFRA section 25(a), a copy of the final rule was provided to the committee on Agriculture, Nutrition, and Forestry of the U.S. Senate and the Committee on Agriculture of the U.S. House of Representatives. Comments were provided by Senator Patrick Leahy and Representative Charlie Rose. Following is a summary of each comment by Senator Leahy and Representative Rose, together with the Agency's response.



Comment #1: Farmworkers, like all other workers, should have access to MSDs as well as the product label.

Response: EPA agrees that workers should have access to MSDs or fact sheets containing similar information about the hazards of specific pesticides. The Agency also notes that the Worker Protection Standard requires employers to provide information from pesticide labels to workers assigned to perform early entry activities and to persons assigned to handle pesticides. In addition, label-specific information must be provided to workers and handlers in the event of an occupationally caused pesticide-related illness or injury.

Comment #2: EPA should also require growers to provide their workers with crop sheets.

Response: The Agency agrees that workers should have access to information about the hazards of the specific pesticides they may be exposed to during their work activities. The purpose of this Notice of Proposed Rulemaking is to establish a mechanism for effectively and efficiently conveying information about pesticide hazards to workers and handlers. The Agency anticipates diverse suggestions and views during the comment period as to the best means of conveying product-specific information to agricultural employees.

#### C. Scientific Advisory Panel

Pursuant to FIFRA section 25(d), a copy of this proposed rule was provided to the FIFRA Scientific Advisory Panel (SAP). A waiver of review was requested; the waiver was granted.

#### HI. Regulatory Assessment Requirements

##### A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a rule should be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are rules that are likely to result in:

(1) An annual effect on the economy of \$100 million or more; or

(2) A major increase in the costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would not be a major rule because it does not meet any

of the above criteria. This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

#### B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164; 5 U.S.C. 601-612) for its impact on small businesses.

The Agency has determined that the burden on small agricultural businesses does not outweigh the risk to handlers and workers employed in those businesses, and an exemption from the requirements in this rule amendment for small businesses would not be warranted. The burden to employers is that of holding for 30 days and making available to their employees upon request informational documents that are available to the employers at no charge.

#### C. Paperwork Reduction Act

The Agency has determined that there are no information collection burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., associated with the requirements of this proposed rule.

#### List of Subjects in 40 CFR Part 170

Environmental protection, Pesticides and pests, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

William K. Reilly,  
Administrator.

Therefore, it is proposed that part 170 as revised elsewhere in this issue of the Federal Register, be amended as follows:

#### PART 170—[AMENDED]

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

2. By amending § 170.3 by adding and alphabetically inserting the following definition to read as follows:

##### § 170.3 Definitions.

Material Safety Data Sheet means an information document as defined by 29 CFR 1910.1200(g).

3. By adding new § 170.133 to subpart B, to read as follows:

##### § 170.133 Hazard information.

(a) Requirement. The agricultural employer shall make available hazard

information concerning a pesticide, in accordance with this section, to any worker who enters a pesticide treated area on an agricultural establishment where, within the last 30 days a pesticide has been applied or a restricted-entry interval has been in effect, or to any worker who may be exposed to the pesticide during its normal conditions of use or in a foreseeable emergency.

(b) Format of information. Hazard information shall be in one of the following forms:

(1) A Material Safety Data Sheet for the product, or for each active and inert ingredient listed on the label of the product.

(2) A fact sheet that has been prepared or approved by a State or Federal agency for the pesticide. If the chemical ingredients of two or more pesticides are substantially similar, but the specific composition varies and the products present similar hazards, one fact sheet may suffice for these similar products.

(c) Content of fact sheets. Each fact sheet shall contain information, expressed in nontechnical terms, except for items specifically targeted towards medical personnel, such as antidotes or emergency treatment. The information shall include:

(1) Typical brand name(s) of the pesticide, and the chemical name and common name of the pesticide.

(2) Information on the physical characteristics of the pesticide, such as:

(i) Color, state (solid, liquid, or gas), odor, and comparative volatility.

(ii) Comparative flammability and explosivity.

(iii) Comparative shelf-life stability, comparative or actual compatibility or incompatibility to possible tank-mix products, and comparative likelihood of decomposing into hazardous components.

(3) Information on the comparative toxicity of the pesticide:

(i) The comparative acute toxicity for the pesticide when swallowed, inhaled, or absorbed through the skin, expressed in terms of the relative category (highly toxic, moderately toxic, slightly toxic or relatively nontoxic) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(ii) The comparative skin irritation potential and eye irritation potential for the pesticide expressed in terms of the relative category (severely, moderately, or slightly irritating or relatively nonirritating to skin and/or eyes) and corresponding signal word, basing the



category and signal word on the criteria of § 156.10(h) of this chapter.

(iii) The comparative sensitization category for the pesticide expressed in terms of the relative category (highly, moderately, or slightly likely or relatively unlikely to cause allergic or sensitivity reactions in some individuals).

(iv) Symptoms of overexposure.

(v) Any chronic or delayed health effects, including tumors, malignancy or cancer, changes in the genes or chromosomes, birth defects, illness or death (miscarriage or stillbirth) to a fetus, infertility or sterility in men or women, blood disorders, nerve or brain disorders, skin disorders, liver and kidney disorders, and/or lung and respiratory disorders.

(vi) Whether the pesticide has been found to be a potential cancer-causing agent by a government agency or recognized medical organization. The sources that must be considered include the latest editions of the National Toxicology Program Annual Report on Carcinogens (NTP), the International Agency for Research on Cancer Monographs (IARC), the Occupational Safety and Health Administration (OSHA), and EPA.

(vii) Medical conditions that may be aggravated by exposure to the product.

(viii) Emergency and first aid procedures for each applicable route of exposure, i.e., oral, dermal, inhalation, and eye.

(ix) Information for physicians on the antidote, if any, and other applicable information for medical treatment.

(x) The types of exposure limits that have been established for the pesticide. The exposure limits that must be investigated include the OSHA Permissible Exposure Limit (PEL) and the EPA restricted-entry interval (REI). Any other known and applicable exposure limit used or recommended by the manufacturer, formulator, importer or a governmental agency must also be noted. All listed limits must be accompanied by a reference source to permit more detailed information to be obtained.

(4) Information on any special protection needed in handling the product such as use of personal protective equipment, engineering controls, and workplace practices for the pesticide:

(i) Situations where personal protective equipment or engineering controls should be used.

(ii) Body protection, including the type of clothing to be worn during exposures, such as mixing/loading, cleaning of equipment, and other handling situations.

(iii) Hand and foot protection needed, including specific material, if known, that is chemical-resistant to the pesticide or typical carrier solvent.

(iv) Eye protection.

(v) Respiratory protection, including, if known, the specific respirator type (dust/mist filtering, vapor/gas-removing, or air-supplied) and the Mine Safety and Health Administration/National Institute for Occupational Safety and Health (MSHA/NIOSH) approval number prefix assigned to equipment that is protective for the pesticide for exposures outdoors and in enclosed areas.

(vi) Recommendations for ventilating enclosed areas, if appropriate.

(vii) Any other personal protective equipment that would be appropriate for specific exposure situations.

(viii) Recommended engineering controls, such as closed systems, enclosed cockpits, or enclosed cabs.

(ix) Other special protection information or special workplace practices.

(5) Information on spill or leak cleanup procedures and disposal methods for excess chemical and for containers.

(6) The date the fact sheet was prepared or revised to its present form.

(7) The telephone number of the National Pesticide Telecommunications Network and the name, address, and telephone number of the manufacturer, formulator, importer, or responsible party, if known, who could provide additional information about the formulated product or the active/inert ingredient and about appropriate emergency procedures.

(8) If relevant information for any given category on the fact sheet is not obtainable, the category shall be marked to so indicate.

(d) *Accuracy of information on the fact sheet and updates.* (1) The entity preparing the fact sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination or shall ensure that the information recorded accurately reflects the information published on the manufacturer's Material Safety Data Sheet or the pesticide registrant's product labeling.

(2) If the entity preparing the fact sheet becomes aware of any significant information regarding its hazards or those of its formulations or the inert ingredients, one of the following actions is required:

(i) The new information shall be added to the fact sheet within 3 months.

(ii) If the pesticide is not being produced or imported currently, the

information shall be added to the fact sheet before the formulated product is introduced or reintroduced into the workplace.

(e) *Obtaining information.* If a fact sheet or Material Safety Data Sheet for the formulated product or for each label-listed active and inert ingredient in the formulated product is not available at the time the product is purchased, the agricultural employer shall take appropriate and timely steps to obtain the Material Safety Data Sheet or fact sheet from the distributor, the manufacturer, a State or Federal agency, or another distribution source.

(f) *Maintaining information.* The agricultural employer shall maintain the information specified in paragraph (a) of this section at an appropriate central location, accessible to workers during working hours and readily obtainable in an emergency.

(g) *Providing information.* The agricultural employer shall provide a written copy of the information specified in paragraph (b) of this section, within a reasonable amount of time, on the request of the worker, a representative of the worker, or medical personnel treating the worker.

4. By adding new § 170.233 to subpart C, to read as follows:

#### § 170.233 Hazard information.

(a) *Requirement.* The handler employer shall provide hazard information concerning a pesticide, in accordance with this section, to any handler of a pesticide that is being handled or that has been handled within the past 30 days or to any handler who may be exposed to the pesticide during its normal conditions of use or in a foreseeable emergency.

(b) *Format of information.* Hazard information shall be in either one of the following forms:

(1) A Material Safety Data Sheet for the product, or for each active and inert ingredient listed on the label of the product.

(2) A fact sheet that has been prepared or approved by a State or Federal agency for the pesticide. If the chemical ingredients of two or more pesticides are substantially similar, but the specific composition varies and the products present similar hazards, one fact sheet may suffice for these similar products.

(c) *Content of fact sheets.* Each fact sheet shall contain information, expressed in nontechnical terms, except for items specifically targeted towards medical personnel, such as antidotes or emergency treatment. The information shall include:



(1) Typical brand name(s) of the pesticide, and the chemical name and common name of the pesticide.

(2) Information on the physical characteristics of the pesticide, such as:

(i) Color, state (solid, liquid, or gas), odor, and comparative volatility.

(ii) Comparative flammability and explosivity.

(iii) Comparative shelf-life stability, comparative or actual compatibility or incompatibility to possible tank-mix products, and comparative likelihood of decomposing into hazardous components.

(3) Information on the comparative toxicity of the pesticide:

(i) The comparative acute toxicity for the pesticide when swallowed, inhaled, or absorbed through the skin, expressed in terms of the relative category (highly toxic, moderately toxic, slightly toxic, or relatively nontoxic) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(ii) The comparative skin irritation potential and eye irritation potential for the pesticide expressed in terms of the relative category (severely, moderately, or slightly irritating or relatively nonirritating to skin and/or eyes) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(iii) The comparative sensitization category for the pesticide expressed in terms of the relative category (highly, moderately, or slightly likely or relatively unlikely to cause allergic or sensitivity reactions in some individuals).

(iv) Symptoms of overexposure.

(v) Any chronic or delayed health effects, including tumors, malignancy, or cancer, changes in the genes or chromosomes, birth defects, illness or death (miscarriage or stillbirth) to a fetus, infertility or sterility in men or women, blood disorders, nerve or brain disorders, skin disorders, liver and kidney disorders, and/or lung and respiratory disorders.

(vi) Whether the pesticide has been found to be a potential cancer causing agent by a government agency or recognized medical organization. The sources that must be considered include the latest editions of the National Toxicology Program Annual Report on Carcinogens (NTP), the International Agency for Research on Cancer Monographs (IARC), the Occupational Safety and Health Administration (OSHA), and EPA.

(vii) Medical conditions that may be aggravated by exposure to the product.

(viii) Emergency and first aid procedures for each applicable route of

exposure, i.e., oral, dermal, inhalation, and eye.

(ix) Information for physicians on the antidote, if any, and other applicable information for medical treatment.

(x) The types of exposure limits that have been established for the pesticide. The exposure limits that must be investigated include the OSHA Permissible Exposure Limit (PEL) and the EPA restricted-entry interval (REI). Any other known and applicable exposure limit used or recommended by the manufacturer, formulator, importer or a governmental agency must also be noted. All listed limits must be accompanied by a reference source to permit more detailed information to be obtained.

(4) Information on any special protection needed in handling the product such as use of personal protective equipment, engineering controls, and workplace practices for the pesticide:

(i) Situations where personal protective equipment or engineering controls should be used.

(ii) Body protection, including the type of clothing to be worn during exposures, such as mixing/loading, cleaning of equipment, and other handling situations.

(iii) Hand and foot protection needed, including specific material, if known, that is chemical-resistant to the pesticide or typical carrier solvent.

(iv) Eye protection.

(v) Respiratory protection, including, if known, the specific respirator type (dust/mist filtering, vapor/gas-removing, or air-supplied) and the Mine Safety and Health Administration/National Institute for Occupational Safety and Health (MSHA/NIOSH) approval number prefix assigned to equipment that is protective for the pesticide for exposures outdoors and in enclosed areas.

(vi) Recommendations for ventilating enclosed areas, if appropriate.

(vii) Any other personal protective equipment that would be appropriate for specific exposure situations.

(viii) Recommended engineering controls, such as closed systems, enclosed cockpits, or enclosed cabs.

(ix) Other special protection information or special workplace practices.

(5) Information on spill or leak cleanup procedures and disposal methods for excess chemical and for containers.

(6) The date the fact sheet was prepared or revised to its present form.

(7) The telephone number of the National Pesticide Telecommunications Network and the name, address, and

telephone number of the manufacturer, formulator, importer, or responsible party, if known, who could provide additional information about the formulated product or the active/inert ingredient and about appropriate emergency procedures.

(8) If relevant information for any given category on the fact sheet is not obtainable, the category shall be marked to so indicate.

(d) *Accuracy of information on the fact sheet and updates.* (1) The entity preparing the fact sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination or shall ensure that the information recorded accurately reflects the information published on the manufacturer's Material Safety Data Sheet or the pesticide registrant's product labeling.

(2) If the entity preparing the fact sheet becomes aware of any significant information regarding its hazards or those of its formulations or the inert ingredients, one of the following actions is required:

(i) The new information shall be added to the fact sheet within 3 months.

(ii) If the pesticide is not being produced or imported currently, the information shall be added to the fact sheet before the formulated product is introduced or reintroduced into the workplace.

(e) *Obtaining information.* If a fact sheet or Material Safety Data Sheet for the formulated product or for each label-listed active and inert ingredient in the formulated product is not available at the time the product is purchased, the handler employer shall take appropriate and timely steps to obtain the Material Safety Data Sheet or fact sheet from the distributor, the manufacturer, a State or Federal agency, or another distribution source.

(f) *Maintaining information.* The handler employer shall maintain the information specified in paragraph (a) of this section at an appropriate central location, accessible to handlers during working hours and readily obtainable in an emergency.

(g) *Providing information.* The handler employer shall provide a written copy of the information specified in paragraph (b) of this section, within a reasonable amount of time, on the request of the handler, a representative of the handler, or medical personnel treating the handler.



## 40 CFR Part 170

[OPP-300164E; FRL-4160-7]

**Exception to Worker Protection Standard Early Entry Prohibition for Hand Labor Tasks Performed on Cut Flowers and Cut Ferns****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed exception to rule; request for comment.**SUMMARY:** EPA is considering an exception to the Worker Protection Standard, published elsewhere in this issue of the *Federal Register*, that would allow, under specified conditions, early entry to perform routine hand labor tasks on cut flowers and cut ferns.**DATES:** Comments, data, or evidence should be submitted on or before September 21, 1992.**ADDRESSES:** Comments should be submitted in triplicate and addressed to the Document Control Officer (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

All comments should bear the document control number OPP-300164E and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, at the OPP Document Control Office, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** James J. Boland, Acting Chief, Occupational Safety Branch (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305-7666.**SUPPLEMENTARY INFORMATION:****I. Background**

Section 170.112(e)(2) of the Worker Protection Standard (40 CFR part 170), which is published elsewhere in this issue of the *Federal Register*, provides a mechanism for considering exceptions to the provision in the Standard prohibiting early entry to perform routine hand labor tasks. Information that the Agency received from the cut flower and cut fern industry during the comment period for the Notice of Proposed Rulemaking for 40 CFR parts 156 and 170, the Worker Protection Standard for agricultural pesticides, has persuaded EPA that there could be substantial economic repercussions if routine hand labor tasks were prohibited during the restricted-entry interval. The Agency has reviewed the information received on the subject and is inclined to grant an exception to such a prohibition for this industry, because,

in light of the economic benefits and new conditions of entry that would be imposed, the Agency believes it is likely that early entry would not pose unreasonable risks to workers in this industry.

**II. Evidence**

Rose growers (and other cut flower growers) opposed the proposed restricted-entry intervals because of the economic burden that would result to their industry. Several comments emphasized the need to cut the roses twice a day, 365 days a year. The comments stated that roses are sprayed on a weekly or biweekly basis and that not cutting flowers 26 to 50 days a year would be economically disastrous. One grower estimated that a 1 to 2-day restricted-entry interval would cause at least a 10- to 15-percent crop loss. Roses, Inc., estimated the crop loss would represent 14 percent of annual sales or, on average, a loss of more than \$35,000 per year per acre.

Several comments suggested that reentry for tending floral crops be allowed after sprays dry, in normal work attire, for not more than 3 hours per worker per day. Others requested that entry to treated areas be allowed for not more than 1 hour in 24 hours per worker so that flowers could be tended.

**III. Agency's Preliminary Findings**

The Agency believes that the cut flower and cut fern industry must have frequent access to harvest and tend to this time-sensitive crop. However, the Agency has no basis for reducing or eliminating restricted-entry intervals on these crops. EPA is not aware of any substitute practice that could be used to avoid the economic burden to the industry. The Agency believes that the projected economic costs due to a prohibition of early entry to perform hand labor tasks are higher than the costs of sending workers in during the restricted-entry interval and providing them with the required early entry protections, including decontamination facilities, specific information, heat-stress avoidance, and providing, cleaning, and maintaining the personal protective equipment.

To avoid excessive economic burden to the cut flower industry, the Agency is inclined to allow early entry, under certain conditions, to perform hand labor tasks on cut flowers or cut ferns, such as harvesting, pruning, disbudding, and watering. The Agency believes that, in this situation, the use of personal protective equipment, accompanied by a limitation on worker-exposure time, accessible decontamination facilities, label-specific and general pesticide

safety instruction, and, often, shade and mechanical cooling devices, will reduce the risk of excessive pesticide exposure for these workers. The Agency expects this exception would have no geographic or time limitations, because these crops are throughout the country and EPA has no basis to believe a time limitation is appropriate. The following additional factors also influenced the Agency's tentative conclusion: (1) Personal protective equipment would be worn for only limited periods of time because the tasks to be performed are of short duration; (2) the tasks to be performed could be accomplished in a reasonably efficient manner while wearing personal protective equipment, including coveralls, chemical-resistant gloves (possibly underneath leather gloves), chemical-resistant footwear and headgear, and safety glasses; (3) the accessibility, usual in this industry, of running water for decontamination and heat stress alleviation; and (4) the availability, also usual in this industry, of shade, fans, or other mechanical ventilation to provide some cooling. The Agency is therefore persuaded that early entry with personal protective equipment is feasible and likely to provide adequate reduction of risks to the workers in the cut flower and cut fern industry.

**IV. Proposed Terms of Exception**

Under the exception to § 170.112(a)(1) of the Worker Protection Standard that the Agency is considering, workers could carry out hand labor tasks associated with the cultivation and harvesting of cut flowers and cut ferns if the requirements of § 170.112(c)(3) through (c)(9) are met, i.e., (1) No entry takes place for the first 4 hours after the application and, thereafter, until any exposure level listed on the labeling has been reached or any ventilation criteria established by the Worker Protection Standard or in the labeling has been met; (2) the personal protective equipment required for early entry is provided, cleaned, and maintained for the worker; (3) the required decontamination and change areas are provided; (4) the required basic training and label-specific information have been furnished; and (5) measures to prevent heat-related illness are implemented, when appropriate. In addition, for this specific exception for cut flowers and cut ferns the time in treated areas for each worker could not exceed 3 hours in any 24-hour period.

**V. Comments Solicited**

The Agency is interested in a full range of comments and information on



this proposed exception and grants 30 days for interested parties to comment. The Agency particularly welcomes comments supported by information, such as evidence demonstrating whether the risks to workers would be acceptable, whether the use of personal protective equipment in these

circumstances would be feasible, and whether there are feasible alternative practices that would make routine early entry unnecessary. The Agency also would welcome any additional information concerning the likely economic impact on this industry of a

prohibition of routine hand labor tasks during the restricted-entry intervals.

Dated: August 13, 1992.

William K. Reilly,  
*Administrator.*

[FR Doc. 92-20007 Filed 8-19-92; 10:31 am]

BILLING CODE 6560-50-F



# FRIDAY AUGUST 21, 1992 PART IV DEPARTMENT OF THE INTERIOR MINERALS MANAGEMENT SERVICE GULF OF ALASKA-YAKUTAT; CALL FOR INFORMATION AND NOMINATIONS; NOTICE

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Friday  
August 21, 1992

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## Part IV

## Department of the Interior

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Minerals Management Service

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Gulf of Alaska-Yakutat; Call for  
Information and Nominations; Notice



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
MINERALS MANAGEMENT SERVICE  
Alaska OCS Region

Gulf of Alaska-Yakutat  
Lease Sale 158  
Call for Information and Nominations  
and

Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS  
(Responses Due in 45 Days)

In accordance with the Final Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program, 1992-1997, the Minerals Management Service (MMS), Alaska OCS Region, is proceeding with the Call for Information and Nominations (Call) and Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Gulf of Alaska-Yakutat Sale 158.

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for proposed Outer Continental Shelf (OCS) Lease Sale 158. This proposed sale, located in the Gulf of Alaska Planning Area, is tentatively scheduled for mid-1995.

Information and nominations on oil and gas leasing, exploration, and development and production within the Gulf of Alaska Planning Area are sought from all interested parties. This early planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (OCSLAA) (43 U.S.C. 1331 - 1356 (1988)), and regulations at 30 CFR Part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, the OCSLAA, and with established departmental procedures.

Description of Area

The area of this Call, located offshore the State of Alaska in the Gulf of Alaska Planning Area as depicted by the shaded area on the attached map, extends offshore about 3 miles to approximately 70 miles, in water depths about 50 meters to 4,000 meters. The area available for nominations and comments consists of approximately 1,307 blocks (about 7.2 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large scale map of the Gulf of Alaska Planning Area (hereinafter referred to as the Call map) showing boundaries of the area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 271-6621. The OPD's may be purchased from the Records Manager for \$2.00 each.

Current editions of the listed OPD's are based on the North American Datum of 1927. Prior to the issuance of any Proposed Notice of Sale, new editions of all the listed OPD's will be prepared based on the North American Datum of 1983.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like considered for inclusion in proposed OCS Lease Sale 158. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are deemed to be proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or social and economic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with



approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Gulf of Alaska-Yakutat Lease Sale 158," or "Comments on the Call for Information and Nominations for Proposed Gulf of Alaska-Yakutat Lease Sale 158," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, Alaska 99508-4302.

#### Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to help identify the areas for potential oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. A third purpose for this Call is to assist in the scoping of the Environmental Impact Statement (EIS) and the development of alternatives to the proposed action for analysis. The Notice of Intent to Prepare an EIS is included later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and the State's CMP.

#### Existing Information

The Information Base Review (IBR) step was completed in February 1992 and, on the basis of that information, the determination was made that there was sufficient information to proceed with the Call. The MMS has gained access to many of the Exxon Valdez oil spill natural resource damage assessment studies after the IBR was completed. As these interim as well as final reports related to the injury to natural or cultural resources become available, the MMS will continue to review the data.

An extensive environmental, social and economic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271-6620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

#### Tentative Schedule

Approximate dates for actions and decision and consultation points in the planning process are:

##### Milestones

Comments Due on the Call  
Scoping Comments Due  
Area Identification  
Draft EIS/Proposed Notice of Sale Published  
Hearings on Draft EIS Held  
Governor's Comments Due on Proposed  
Notice of Sale  
FEIS Filed with EPA  
Consistency Determination Signed  
Final Notice of Sale Published  
Sale

##### Dates

September 1992  
October 1992  
April 1993  
May 1994  
July 1994  
July 1994  
February 1995  
February 1995  
July 1995  
August 1995



**NOTICE OF INTENT TO PREPARE ENVIRONMENTAL IMPACT STATEMENT**  
(Comments Due in 45 Days)

**Purpose of Notice of Intent**

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 158 Gulf of Alaska-Yakutat. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

**Instructions on Notice of Intent**

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Gulf of Alaska-Yakutat Lease Sale 158." Comments are due no later than 45 days from publication of this Notice.

*Scott Sewell*  
Director, Minerals Management Service

Approved:

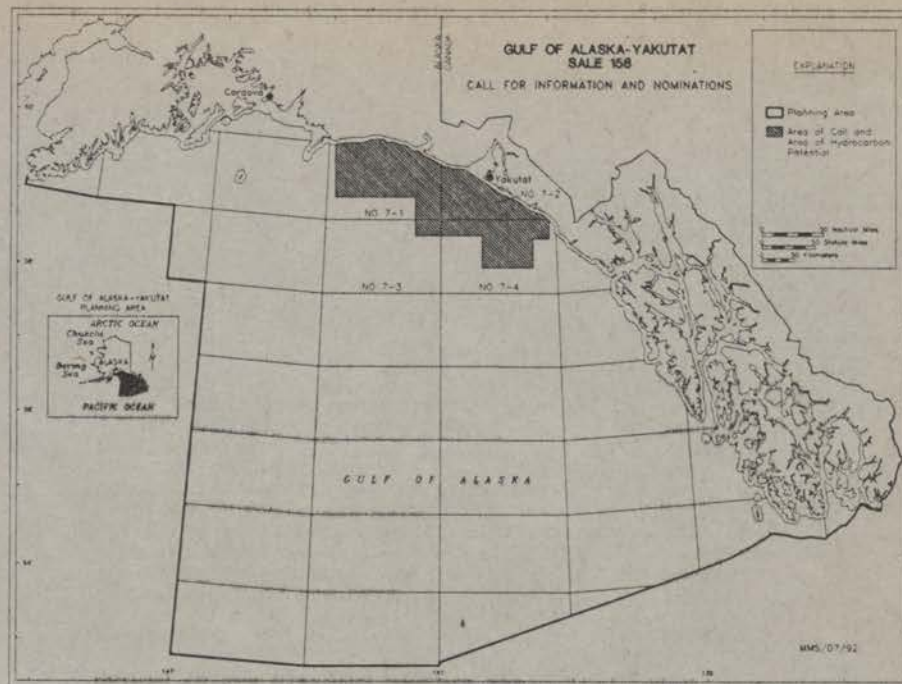
Scott Sewell

*David O'Neal*  
Assistant Secretary, Land and  
Minerals Management

*8-14-92*  
Date

David O'Neal

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[FR Doc. 92-19981 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-MR-C



# United States Federal Register

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Friday  
August 21, 1992

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## Part V

### Department of Energy

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Request for Comments Concerning State  
Policies Affecting Natural Gas  
Consumption; Notice



## DEPARTMENT OF ENERGY

**Request for Comments Concerning State Policies Affecting Natural Gas Consumption**

**AGENCY:** Office of Domestic and International Energy Policy, Department of Energy.

**ACTION:** Notice of Inquiry and Request for Public Comments: State Policies Affecting Natural Gas Consumption.

**SUMMARY:** As part of the National Energy Strategy (NES), the Department of Energy (DOE) is conducting a study of state policies that impact the efficient use of natural gas. The purpose of this notice is to solicit comments and information for use in this study.

The NES states: "The fundamental thrust of the (NES) natural gas initiatives is to build on the progress that has been made by reducing remaining regulatory barriers and allowing market forces to better ensure the adequate supply and efficient delivery of natural gas." The relative significance of the role states play in the natural gas industry is growing as the importance of natural gas to energy security, the environment and the economy is increasingly recognized and as federal regulations are reformed to place greater reliance on market forces. Understand how state policies and regulations impact the gas industry will aid policymakers at both the state and federal levels to develop strategies to improve efficiency in the natural gas marketplace.

The NES proposed regulatory reforms for the natural gas industry which focused primarily on federal actions. The current DOE study of state regulations is intended to enhance coordination of federal and state natural gas regulatory policy.

**DATES:** Written comments and other materials must be submitted by October 20, 1992, to ensure their consideration. Reply comments should be submitted by November 19, 1992. If you intend to file reply comments, please indicate this at the time you file initial comments so that we may provide you with a set of all initial comments filed by the parties.

**ADDRESSES:** Send comments to Michael York, Office of Domestic and International Energy Policy, U.S. Department of Energy, Forrestal Building, room 7H-049, PE-52, 1000 Independence Ave., SW., Washington, DC 20585, Fax: (202) 586-4341.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Michael York, at (202) 586-5369.

## SUPPLEMENTARY INFORMATION:

## I. Introduction

Natural gas use decreased from a high in 1972 of 22 trillion cubic feet (tcf) to a recent low of 16.2 tcf in 1986. As reforms of federal regulation began to have an impact, consumption since 1986 has increased to about 19.5 tcf in 1991.

Despite this recent increase in consumption, there is a growing consensus that the natural gas resource base and economically recoverable reserves are sufficiently abundant to support greater reliance on natural gas.

The decrease in the utilization of natural gas from its high in 1972 through 1986 is largely the result of federal regulations in the 1970s. Since enactment of the Natural Gas Policy Act (NGPA) in 1978<sup>1</sup>, the general trend has been to reform federal laws and regulations to remove several unnecessary impediments to natural gas use, but it has been argued that much more should be done to increase the role of natural gas in the energy mix, especially at the state level. DOE, in this notice, seeks public comment in order to help it better understand state policies, laws and regulations regarding natural gas, and, in particular, to identify those that may impede market efficiency.

The regulatory changes that have taken place at the federal level represent a new regulatory framework requiring reconsideration of state regulation of natural gas. To that end, DOE and the National Association of Regulatory Utility Commissioners (NARUC) cosponsored a conference on "State Regulation and the Market Potential for Natural Gas: Challenges and Opportunities", in Phoenix, Arizona, February 3-5, 1992. (A copy of the proceedings can be obtained by contacting John Sacco at DOE, phone: (202) 586-5667).

In comments made at the conference, one state public utility Commission Chairman stated that:

The traditional methods of State regulation were quite suitable to the old fabric of a fully regulated natural gas industry. There was a continuum of regulation from the wellhead to the burner tip. \* \* \* The question at this conference \* \* \* is whether the State regulatory methods which were suitable to the former industry structure are still suitable today. \* \* \* Also, I am concerned that a failure to adjust state regulation to the new federal policies, ongoing technological changes, increasingly competitive market dynamics, and the environmental needs of the nation, may cause economic distortions or raise barriers to the efficient, economical and environmentally sound use of natural gas.

<sup>1</sup> 15 U.S.C. Sec. 3301-3432 (1988).

DOE is seeking to ascertain what regulatory authority the states have over the natural gas industry, how that authority has traditionally been exercised, and what the effect of changes in the industry have, will, or should have on state regulation. In addition, and in particular, DOE is interested in any state regulations or policies that are perceived to raise a barrier to competition in the natural gas industry. The following issues, addressed in greater detail in Part III of this notice, are of special interest to DOE:

A. The regulatory impediments to natural gas exploration and production.

B. State regulatory barriers to timely and accurate reporting of natural gas deliverability data.

C. State regulatory barriers to natural gas consumption.

D. Cost allocation and rate design practices by local distribution companies (LDC), and their effect on customer classes and markets for gas.

E. The potential for unbundling of transportation services at the state level.

F. Regulatory prudence reviews of LDC purchasing practices related to gas supplies and new capacity and transportation services.

G. The impact of long-term contracts on the natural gas purchaser's supply portfolio.

H. Impediments to the use of incentive regulation in a traditional cost-based regulatory framework.

I. Impact of combined electric/gas utility companies on market penetration of natural gas.

J. The effects of utility company diversification on competition and efficient pricing.

K. The impact of FERC Order No. 636 on municipal utilities<sup>2</sup>.

L. The impact of state regulation on the financial sector's perception of the natural gas industry.

M. The role of natural gas in generation of electricity by utilities, independent power producers, and cogenerators.

N. Impediments to the penetration of new natural gas end-use technologies.

O. State regulatory barriers to natural gas due in the transportation sector.

P. The effect of integrated resource planning on the natural gas market.

Q. Other factors affecting natural gas use.

<sup>2</sup> Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol, Order 636, 57 FR 13267 (April 16, 1992), FERC Stats. and Regs. Para. 130,939 (1992).



These and other issues may be addressed by respondents. Responses will be used to identify potential impediments of regulatory practices and policies that may have an impact on efficient functioning of the natural gas market. Responses may also identify areas where federal and state regulations could be better coordinated. Finally, responses may include suggestions for general or specific changes in state regulatory practice which would have a positive impact on the natural gas industry as a whole.

## II. Background

Federal regulation in the 1980s did much to move the natural gas industry toward a less regulated, more market-oriented structure. The National Energy Strategy provided further impetus to significant reforms of downstream aspects of the industry. Among the significant changes that have shaped the increasingly competitive natural gas industry were:

- Amendments to the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act) <sup>3</sup> and to the NGPA;
- Issuance of Federal Energy Regulatory Commission (FERC) Order No. 451 <sup>4</sup> in 1986;
- Promotion of "open access" transportation on interstate natural gas pipelines through FERC Order Nos. 436/500 <sup>5</sup>;
- Development and emergence of a large natural gas spot market;
- Enactment of the Natural Gas Wellhead Decontrol Act of 1989 <sup>6</sup>, lifting

remaining controls of wellhead prices by January 1, 1993;

- Implementation of the U.S.-Canada Free-Trade Agreement; and
- FERC Order No. 636, which will unbundle natural gas pipeline services, establish equal access to pipeline transportation services, and establish more efficient primary and secondary markets for capacity.

In July 1989, President Bush directed the Secretary of Energy to initiate the development of the comprehensive NES. After 18 public hearings, over 20,000 pages of public comments, and nineteen months of analysis, the first edition of the NES was released by the President in February 1991.

The NES proposed important goals, objectives, and initiatives to address regulatory and technology barriers impeding increased natural gas production, transportation and use. NES proposals are being implemented by FERC under existing authority and through legislative initiatives that are part of comprehensive legislation currently under consideration by Congress.

For example, the recent restructuring rule (FERC Order No. 636) implements several important NES recommendations and ushers in a new era of regulation which focuses increasingly on providing new options to both buyers and sellers of natural gas. An issue to be addressed in the inquiry is whether current state regulations and policies are likely to enhance or constrain the opportunities created by Order No. 636. Similarly, do state regulations enhance or thwart reforms announced by FERC on pipeline construction, incentive ratemaking and natural gas use for transportation? Additionally, what state actions should be taken to enhance the new provisions of the legislation that will encourage a larger role for the functioning of a competitive natural gas market? Lastly, given the dramatic changes in the perception of the role that natural gas could play in the national energy mix, are there other aspects of state policies that require some reconsideration because they were premised on outdated perceptions or attitudes regarding natural gas supply or use?

## III. Issues

### A. Natural Gas Exploration And Production

The history of the natural gas industry suggests that many regulatory measures, which now represent barriers, were implemented in the past because of a mistaken perception that the resource base was quite limited. At the federal

level, both the NGPA and Fuel Use Act were passed in 1978 for this very reason. Rules for gaining the permits necessary for new gathering facilities and intrastate pipelines have also reflected the bias that the limited economically recoverable reserves required special attention. Thus, there may be instances where these regulations need to be revised. In other cases it may be beneficial to apply existing rules and regulations in a more expansive and expeditious manner.

One speaker at the Phoenix conference stated that, after spending ten years going through the seismic and drilling process and discovering natural gas at the Mary Ann Field in the Mobile Bay area, it then took another nine years to work through such issues as procedures for development, federal and state permits, and the environmental impact report, to finally complete development.

Questions for comment:

1. Are there state environmental rules and regulations governing natural gas exploration and production that could be revised or removed without lessening safety, environment or property rights concerns that would permit natural gas to capture its market potential?
2. Do barriers exist in the regulation of gathering and intrastate pipeline operations?
3. Could existing state regulations be carried out in a more expeditious fashion, without compromising intended results?

### B. Natural Gas Deliverability Data

The implementation of FERC Order No. 636, and its mandated use of Electronic Bulletin Boards (EBB), provides a unique opportunity to develop or reform the information systems that will guide future competitive business and policy decisions. Such electronic information systems could cover aspects of production, transmission, and distribution operations, whether regulated by states or the federal government. The result would be a database that could be used to accurately assess the potential of the natural gas industry to supply the economy's energy needs now, and in the future.

The electronic information system could be used to fill some of the gaps between federal and state reporting of gas deliverability. State installation of software and hardware could allow realtime tracking of such items as gathering capacities and flows, intrastate volumes, intrastate sales, and distributor sales. This information

<sup>3</sup> Pub. L. No. 95-620, 92 Stat. 3281 (1978).

<sup>4</sup> Ceiling Prices: Old Gas Pricing Structure, Order 451, 51 FR 22168 (June 18, 1986), 53 FR 7503 (March 9, 1988), FERC Stats. and Regs. [Regulation Preambles 1986-1990] Para. 130,701 (1986); Order 451-A, 51 FR 46762 (December 24, 1986), FERC Stats. and Regs. [Regulation Preambles 1986-1990] Para. 130,720 (1986); and Order 451-B, 52 FR 21699 (June 9, 1987), FERC Stats. and Regs. [Regulation Preambles 1986-1990] Para. 130,748 (1987).

<sup>5</sup> Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. and Regs. [Regulations Preambles 1982-1985] Para. 30,665 (1985), vacated and remanded, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988), readopted on an interim basis, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. and Regs. [Regulations Preambles 1986-1990] Para. 30,761 (1987), remanded, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), readopted, Order No. 500-H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. and Regs. [Regulations Preambles 1986-1990] Para. 30,887 (1989), reh'g granted in part and denied in part, Order No. 500-L, 55 FR 6605 (Feb. 28, 1990), FERC Stats. and Regs. [Regulations Preambles 1986-1990] Para. 30,880 (1990), aff'd in part and remanded in part, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), cert. denied, 111 S. Ct. 957 (1991).

<sup>6</sup> Pub. L. No. 101-60, 103 Stat. 157 (1989).



would then be electronically linked with FERC data to form a national database.

Another benefit could be the link-up of industry and government officials to ensure good communications between all parties in the gas market during times of emergency and to ensure continued deliveries of natural gas to high-priority human needs customers.

#### Questions for comment:

1. Does the lack of a comprehensive natural gas data base pose a barrier to natural gas achieving its market potential? If so, what areas of information tracking could be improved?

2. An electronic database is often times an expensive proposition to develop and operate. How might this system be funded? Who would be best suited to oversee the database?

3. Would states be willing to participate in a cooperative effort to standardize the electronic reporting of gas production and deliverability data in a realtime basis?

#### C. Natural Gas Consumption

The mistaken perception of the size of the gas resource base may not only have led to limitations in gas exploration but may also have led to limitations in gas use. Some PUCs still impose moratoria on gas use in certain applications and maintain limits on LDC advertising that could encourage greater economical use of natural gas. It also has been observed that in a few states there is still legislation that bars natural gas for heating in mobile homes.

#### Questions for comment:

1. How widespread are state-imposed limits to the consumption of natural gas?

2. What are the specific limitations by end-use sectors, classes of consumers, type of hook-up, etc?

3. What are the policy or regulatory reasons for state limits on consumption?

4. Are state limitations on natural gas consumption actively enforced, or are they residual regulatory practices that act as psychological market barriers?

#### D. LDC Rate Design

Some contend that the most direct manner to achieve the full market potential for natural gas is to price all gas services efficiently. FERC, commencing in 1985 with Order No. 436 and continuing in 1989 with the Policy Statement on Rate Design, and recently with Order No. 636, has sought to change pipeline transmission rates such that gas use at peak is rationed in accordance with market demand, non-peak throughput is maximized, and producers can sell their gas in a competitive market, irrespective of the pipeline's transmission costs. Thus, it could be said that the price signals for

open access transportation and the emergency of a more competitive natural gas market have been or are soon to be achieved.

Questions have been raised concerning whether rate designs for LDC distribution approved by state regulators have been similarly changed to accurately price differences in seasonal use of the distribution system, properly allocate risk and encourage maximum gas use. Thus, it has been argued that the price signal determined at the federal level become muted by the time state regulated rates are applied, and burner-tip customers make consumption decisions based upon inaccurate price and risk allocation.

#### Questions for comment:

1. Are there barriers to pricing natural gas efficiently at the burner tip that prevent natural gas from gaining its full market potential?

2. Where workable competition exists (for example, provision of gas supply and storage) could public utility commissions (PUC) lessen or eliminate regulation of LDC services and their pricing in such a way that market forces are more effective and beneficial to consumers?

3. What rate policies should state PUCs employ to efficiently price natural gas services? Would a change in these rate policies adversely affect or benefit residential customers?

4. Could efficient pricing of natural gas eliminate the need for demand side management policies?

5. How could PUCs address Order No. 636 transition costs passthrough? Should these be added to firm service demand charges or added to the volumetric component for both firm and interruptible rates?

#### E. Access to LDC Distribution Services

Through changes in federal regulation gas supply, transmission capacity, storage, merchant, and no-notice service have become distinct, "unbundled" products and services. Many observers believe that this process should continue, and that LDCs should establish comparability of service choices for their customers. The natural gas distributor could become the final transporter to those customers who request transportation only and, where applicable, could separately price and offer storage service. One possible outcome of LDC unbundling is that the LDC would be able to reduce the potential for bypass. However, concerns have been raised over the possibility of cross-subsidization among customer classes in the pricing and selection of these unbundled services.

#### Questions for comment:

1. Can LDC customers obtain comparable firm bundled and unbundled distribution services?

2. Will customer access to LDC unbundled services permit the development of market-driven demand for natural gas?

3. How would unbundled service at the LDC level impact by-pass?

4. How would the LDC's service obligations change after unbundling?

#### F. PUC Review of LDC Purchasing Practices and Transportation Arrangements

Pipelines no longer provide one federally approved rate for firm city-gate gas sales service. Under either Order No. 636 or as embodied in pending energy legislation, FERC would defer to market forces to judge the prudence of pipelines' gas supply portfolio, pipeline storage and transmission rates vary within bands of reasonableness, rates for new pipeline capacity will be based on negotiated terms, and customers can resell their claims on pipeline and storage capacities in a secondary market at market prices subject to price ceilings. Thus, the rates which LDCs pay to pipelines and the revenues which they collect from customers depend upon their skill in anticipating market conditions and negotiating contract terms.

New issues arise for state commissions when judging LDCs' purchasing and contracting practices. It would appear that few PUCs have resolved the question of how capacity resale proceeds will be distributed. Little incentive exists to encourage maximum gain in revenue from resale if all funds are credited to firm customers. Yet gas use could be constrained if the LDC does not actively resell capacity.

Reduced regulation at the federal level may have led many state commissions to conclude that it is necessary for them to increase their level of scrutiny of the various components of the city-gate price of natural gas. The result—inquiries of natural gas purchasing practices, management audits, and formal least-cost planning documentation—may have become a new, and possibly unnecessary, regulatory burden for both commissions and LDCs.

Advocates for increasing state review of purchasing practices argue that this is the only way to assure that captive customers do not end up paying excessively high gas costs. However, critics argue that the prudence review process abrogates deregulatory efforts



and leads LDCs to try to minimize risk exposure, rather than to minimize costs.

Questions for comment:

1. Do after-the-fact investigations by state regulators of natural gas purchasing practices pose a barrier to increased natural gas sales?

2. Would before-the-fact, or forward-looking reviews, present any problems?

3. Do incentive rate mechanisms supplant the need for PUCs to have both before- or after-the-fact reviews of LDC gas purchasing and transportation contracting decisions?

4. Should states review transactions by LDCs where such transactions take place in a competitive market?

5. How will LDC purchases and sales (specifically, capacity brokering and capacity negotiation) of firm pipeline capacity affect the efficiency of the natural gas market?

6. If purchasing practice reviews are deemed necessary, how could they be implemented so as not to pose a barrier to natural gas achieving its market potential?

#### G. LDC Use of Long-Term Contracts

The place of long-term contracts in the gas supply portfolio of the LDC is subject to substantial controversy. Arguments have been made for the use of long-term contracts primarily to protect against supply shortages. Also, because of the fear of supply shortages, proponents argue that long-term contracts should carry a price premium over the spot market price. In addition, there are assertions that long-term contracts must have realistic contract pricing indices that keep the price of these contracts linked to the current market gas price.

Arguments have also been made that in the currently more competitive natural gas industry, supply reliability can be achieved by transacting business at the current spot market price. Under this line of thinking, long-term contracts convey very little value and hence would not be expected to garner a price premium. There is also a middle of the road position which simply advocates a portfolio approach to contracting, involving a mix of spot, intermediate (two to five years), and long-term (five years or longer) supply contracts. Some have that state regulation of LDC contracting practices may push the LDC towards short-term contracts. This may lessen producers' motivation to further exploration activities. Thus, this school of thought advocates that state PUCs adopt policies that foster and encourage the development of long-term contracts with producers.

Question for comment:

1. Does the length of the supply term or the pricing provision of a contract pose a barrier to the use of natural gas?

2. Do the policies of PUCs regarding the recapture of purchase gas costs force LDCs to pursue one type of contract (duration and pricing provisions) over others?

3. Assuming that state policy is not neutral, would natural gas utilization increase if state governments maintained a neutral policy with regard to the nature of private contracts for gas supply?

4. How should PUCs protect core customers from unwanted risks and yet create a regulatory setting which allows the LDC to exercise its own judgment in assembling its gas portfolio?

5. What price risks are reasonable for a core customer to bear? Is it proper for the LDC to speculate on long-term prices in order to attempt to lock-in below market prices for gas?

#### H. Incentives Rates

In the new, unbundled natural gas market, LDCs have more options for achieving reliable least-cost service. One argument is that although traditional regulation is inadequate, deregulation is also inappropriate since the LDC continues to hold a natural monopoly over some of its services. This reasoning argues for some form of incentive regulation, ranging from price caps to indexes, by which the LDC's rates become divorced from its actual costs. The LDC gains greater rewards from good decisions and is also placed at greater risk. It has been argued that state commissions have implemented incentive regulations in the telecommunication industry with generally favorable results, and that similar results could be achieved with gas.

Proponents claim incentive regulation facilitates more flexible pricing and initiation of new services. Opponents believe that LDCs can function quite efficiently under traditional regulation.

Questions for Comment:

1. Does traditional state regulation reduce the incentives for a utility to operate in the most efficient manner? If so, how? Can incentive regulation improve the process?

2. How can incentive regulation best be applied? Is it best applied to specific aspects of operations (cost of distribution, purchased gas cost, pipeline capacity cost) or can it be applied on a utility-wide basis?

3. If an alternative to traditional regulation is needed, is deregulation preferable to incentive regulation? If so, what are the principal obstacles to deregulation?

4. Is incentive regulation an adequate or desirable alternative to purchased gas adjustment (PGA) regulations?

5. Will state regulatory policies that provide greater incentives for gas distributors contribute to increased natural gas use?

#### I. Impact Of Combination Gas/Electric Companies On The Use Of Natural Gas

The emergence of efficient pricing and optimal output is enhanced when both interfuel and gas-on-gas competition are facilitated. Some argue that competition between electricity and natural gas can be enhanced by the breakup of combination natural gas and electric utilities. The thinking is that the synergies gained from such areas as pooled administration, combined field staffs, reduced meter reading costs and gains from financial diversification are outweighed by the failure to capture the cost efficiencies that would result from increased interfuel competition. Proponents of combination utilities argue that not only are the synergies crucial but also that unique opportunities will be available to them in the form of interfuel load balancing (fuel switching).

The proponents of break-up also note that combination utilities are a rarity in other industrialized nations, and their absence elsewhere does not appear to raise problems. Finally, these proponents perceive that natural gas use in cogeneration may have been held in abeyance in those service areas in which combination utilities with excess electric generation capacity are located.

Questions for comment:

1. Do combination electric and natural gas utilities create a barrier to existing or future competition between the two fuels? Is competition suppressed? Is the market for natural gas thus limited?

2. Do combination utilities use revenues from the natural gas business to subsidize the electric business, or vice-versa? Do they coordinate electric and gas price structures and levels to maximize total company return at the expense of interfuel competition?

3. What is the magnitude of the synergies from combination utilities? What is the magnitude of the cost efficiencies and more efficient pricing when combination utilities are divested?

4. If PUCs established incentive rate mechanisms for both natural gas and electric rates, would utilities work in their own self interest to divest or combine so as to capture the gains of increased operating efficiency?

5. Assuming that there are net benefits from separating combination utilities, are there alternatives short of divestiture



(such as separation operating subsidiaries) in which these alleged gains can be achieved?

#### J. Utility Diversification

Utility diversification and its impact on the regulated utility has long been an area of controversy. Utilities have, for some time, been involved in diversification efforts such as other energy related businesses, real estate, international ventures and banking. It has been argued that there are benefits to ratepayers from diversification in the form of a lower cost of capital, due to risk spreading, and lower operating expenses. Proponents also say that the unregulated entities can be separated to insulate ratepayers from any cross-subsidization. Another line of thinking is that the problems of cross-subsidization and changes in the overall risk of the firm cannot be eliminated without divestiture of the unregulated business(es). Opponents also argue that investors are perfectly capable of structuring diversified portfolios of investments in various businesses on their own and do not need utility management doing this for them.

##### Questions for comment:

1. Are there examples where diversification efforts have or have not resulted in cross-subsidization?

2. Do diversification efforts result in cross-subsidization, and, therefore, higher or lower prices for natural gas than would be the case with a stand-alone natural gas company?

3. Is it sufficient to have an unregulated company operated as a separate subsidiary or do the two need to be completely separate entities?

#### K. Impacts of Federal Regulatory Reforms on Municipal Gas Utilities

Just as the move towards deregulation at the federal level will have a profound impact on local distribution companies, municipal natural gas utilities may also be affected. In order for municipalities to remain efficient suppliers of natural gas, it is argued that municipalities will need to form consortia to buy, as a group, the necessary natural gas supplies, firm and interruptible capacity, and storage. It is said that a specialist will be needed to line up these services. There are also questions about how the new gas costs will flow through most efficiently to customers.

There is also a line of thinking that questions whether the natural gas market would not function better if municipal distributors became privatized. Because municipalities can obtain lower cost financing, municipalities become overly capital intensive in their gas operations. Further, some are

concerned that municipal natural gas service contains hidden charges to cover non-gas municipal expenditures.

Proponents, however, argue that the ability to gain debt at a lower cost is essential for municipal distributors to economically perform service in smaller and rural communities.

##### Questions for comment:

1. Does a more competitive natural gas industry place municipalities at a disadvantage in providing service in a cost-effective manner?

2. Does the issuance of tax-exempt bonds by the municipal distributor bias its decision-making in its provision of service towards greater capital expenditures and debt?

#### L. The Financial Sector's Perception of the Natural Gas Industry

Wall Street has reacted recently to the regulatory changes and financial condition of companies in the natural gas industry. It is argued that some of the risk borne by pipelines and local distribution companies (LDCs) today is created by the regulatory environment. The financial sector's view of the policies of state and federal regulatory bodies affects financing opportunities that affect the overall cost of supplying natural gas to the market. As regulatory barriers to competition are removed, the cost of capital to pipelines and LDCs will move to the point where it reflects only the risks of doing business in a competitive environment.

##### Questions for comment:

1. What regulatory or other changes can be made to reduce or eliminate regulatory risk as a component of all aspects of the cost of capital?

2. It has been said that cogenerators cannot get financing without procuring a long-term contract for natural gas. Is this a rational requirement in this environment of greater supply reliability and greater competition? If not, how can financiers be assured that shorter-term contracts are not more risky, or that they will be compensated for greater risk? Would the risk increase, if any, significantly affect the cogeneration industry?

#### M. Natural Gas in Electric Generation

Natural gas is one of the primary energy forms under consideration for use in electric generation in the future. It has environmental advantages that would enable utilities to meet environmental requirements more easily. Natural gas also has technological advantages, even for baseload generation. Also, changes in electric generation involving such areas as bidding, transmission access and integrated resource planning, may have

a positive impact on the role that natural gas plays in the electric generation market. However, even with these advantages and changes, natural gas may face barriers that keep it from achieving greater acceptance in the marketplace. Natural gas may suffer from an unfair disadvantage when competing against other fuels. Coal may have an advantage over natural gas, it has been argued, because PUCs tend to scrutinize variable fuels costs more closely than fixed capital costs. Certain state commissions may also favor coal because of the economic dependence on coal in their states, even though the Clean Air Act Amendments and other economic and policy factors would seem to lead to greater use of natural gas due to its economic and environmental advantages.

##### Questions for comments:

1. What are the state regulatory barriers, if any, to natural gas achieving its full potential in the electric generation market?

2. What are the regulatory implications of using natural gas for generation of electricity for peaking vs. base loading?

3. Are there changes in state regulation that should be made to allow natural gas to compete on an even footing with other electric generation energy sources?

4. In the past, some state PUCs have held that natural gas is a relatively scarce resource and should be reserved for uses other than electric generation. Is this still the case?

5. To what extent will state regulation of sales of emissions allowances and compliance with the Clean Air Act Amendments affect natural gas use in electric generation?

#### N. New Natural Gas End-Use Technologies

Recent developments in a number of natural gas end-use technologies have led to the belief that the potential exists for gains in natural gas use, particularly during the summer months. For instance, substantial improvements in the efficiency and first-cost premium of natural gas cooling and desiccant dehumidification are making these space conditioning technologies competitive in some cases. However, there are barriers to acceptance in the marketplace, it is argued, which may keep gas technologies from achieving their potential in this market.

##### Questions for comment:

1. What are the critical barriers to natural gas end-use technologies? Are they principally technological? Economic?



2. If so, what can state regulators do to remove the barriers? What can natural gas utilities and equipment manufacturers do?

3. Should LDCs become involved in research and development efforts or promotion of end-use technologies? If so, how should these be treated for ratemaking purposes? And how should these efforts and rates relate to the efforts and rates associated with the Gas Research Institute?

4. How would incentive regulation impact LDC expenditures on research and development, and promotion of new technologies? How should research and development efforts be divided between the regulated distributors and the unregulated developers and vendors of new technologies?

#### O. Natural Gas Vehicles

In the last few years, natural gas has begun to enter the transportation sector as a viable energy form. However, it is said there are currently regulations which may hinder its penetration in this market. Regulations that treat natural gas service stations as public utilities and prohibit compressed natural gas vehicles from driving through tunnels may be unnecessary impediments to natural gas vehicle (NGV) penetration.

In order for natural gas to make inroads in the transportation market, it is argued that regulators should allow cost recovery of related expenses incurred by LDCs, such as the costs of establishing fueling facilities, as well as the cost of vehicle conversions.

Opponents of cost recovery argue that any investment in the vehicular natural gas market should be made as part of a separate, unregulated venture. Such expenses are not incurred to provide existing ratepayers with natural gas, and therefore should not be a part of existing rates. These opponents argue that if the utility wants to enter a new and competitive market for its product, the shareholders should be the ones to make the investment.

Questions for comment:

1. Are state regulations unduly obstructing and limiting natural gas use in the transportation market?

2. Should the utility's expenditures to enter this market be included in its regulated operations, or should such expenditures be made through an unregulated venture?

3. Should the natural gas utility even be involved in vehicular natural gas sales?

4. What can states do to encourage sensible, timely development of compressed natural gas fueled fleets in the public and private sectors?

#### P. Integrated Resource Planning

Integrated resource planning (IRP) for gas utilities is receiving increasing attention. A 1991 survey of state commissions found 15 states implementing IRP for LDCs in their jurisdictions, with several more states moving rapidly toward gas IRP efforts. A 1992 survey of 85 LDCs found 11 with approved IRPs in place, 20 more under Commission order to file, and 41 who expect to have an IRP program within two years.

These efforts are still in their infancy when compared to electric IRP. Electric IRP concepts and techniques are much better developed than those for gas IRP, primarily because the electric utility industry has been pursuing the topic for a longer period of time and has more experience with it. A 1992 survey found 30 states implementing IRP, covering about 60 percent of the nation's approximately 250 investor-owned utilities. A 1992 survey of public power utilities found 227 that prepare IRPs. Gas utilities have only recently begun to define the scope, processes, and appropriate applications for gas IRP.

Some perceive opportunity for IRP to benefit gas utilities. One objective of IRP is to evaluate all resource options on an equal and consistent basis without preconceived bias toward any particular resource option, fuel type, technology, or form of ownership. As a result, IRP seeks to ensure that gas and electric resource alternatives compete on a level playing field, thus leading to removal of unwarranted barriers to effective competition. IRP could enable gas utilities to make the case for gas based on technical, economic, and environmental merits without preconceptions against new applications and markets, including gas cooling and cogeneration.

Others perceive that substantial differences in market structure, regulations, and business conditions make it inappropriate to adopt the electric IRP model for gas. For example, methods for determining avoided costs of electricity—a key element in evaluating electric demand-side management (DSM) programs—are much better understood and accepted than are the approaches for determining avoided costs for gas.

Still others assert that when DSM program costs, that is, the expenditures incurred to alter the timing and/or quantity of energy that customers consume, are incorporated into rates, the result will be higher rates. Though participants will see an overall reduction in their costs, nonparticipants could see an increase. These increases

could affect the use of natural gas, relative to other energy forms such as fuel oil and propane.

IRP's potential affect on interfuel competition between gas and electricity could be significant. In many regions of the country, gas and electricity compete for market share for end-uses such as water heating, space heating, and air conditioning. Gas-fired, on-site generation and cogeneration compete in some regions with utility provided electric service. Ultimately, the challenge is to establish appropriate IRP processes that both electric and gas utilities can work within so that all parties have the opportunity to benefit.

Questions for comment:

1. What positive and negative effects can be expected from gas IRP on the natural gas industry (producers, pipelines, distribution companies, consumers, state regulatory agencies)?

2. To what extent is gas IRP expected to overcome barriers to efficient market operation? Are there other approaches that can be applied to increase competition and economic efficiency in gas utility markets?

3. How will fundamental differences in market structure, regulations, and products and services affect transferability of IRP experiences from the electric utility industry to the gas utility industry? How should electric IRP concepts and techniques be modified to suit natural gas applications?

4. How should state IRP policies handle interfuel competition for market share between electric and gas utilities? How can the interests of utilities, consumers, and states be balanced with respect to interfuel competition, fuel switching, and related issues?

5. Do DSM programs (and the state policies which encourage them) offer competitive advantage or disadvantage to the utilities who implement them?

6. What measures of avoided costs should be used to assess the benefits of gas DSM programs? How should the perspective of the various stakeholders (ratepayers, utilities, society) be incorporated into cost/benefit evaluations of gas demand-side management?

7. How does the long-term availability and expected prices for natural gas affect gas and electric IRP processes, and vice-versa?

8. One of the reasons for establishing a regulatory climate conducive to the IRP process is to correct market failures. What are the market or regulatory failures that exist that justify regulatory changes for natural gas IRP? Are these regulatory changes the best way of addressing any perceived market



failures? Should IRP be required by the states?

9. To what extent could efficient pricing, as a form of passive DSM, capture the inherent benefits of IRP?

#### Q. Other Factors Affecting The Use Of Natural Gas

In this document, we have focused primarily on PUC regulations and policies. However, state and local rules, policies and legislation can also impede the use of natural gas in ways that would otherwise support federal environmental, economic, and energy security policies. Particularly, some policies differentially affect the use of natural gas and other energy forms. For example, it is said that differential tax policy on natural gas and fuel oil could distort prices in favor of fuel oil. Other areas such as state tax policies, royalty payments, franchise fees, environmental regulations, economic development incentives, and even regulatory fees may treat one energy form preferentially over another. Another school of thought is that these issues have little impact on the use of natural gas in the nation's overall energy mix.

Question for comment.

1. Are there state and local policies, rules, or laws other than in the public utility area that impose impediments to the efficient use of natural gas? Please try to be specific in detailing the particular law or policy and in identifying the manner and magnitude of any impact on gas consumption.

2. Do state legislation or local policies unduly favor or adversely affect the use of natural gas, relative to electricity, fuel oil, coal, propane, or conservation? Please cite specific examples and their effect.

#### IV. Request for Comments

In accordance with the NES, DOE is soliciting comments for a study it is conducting on the impact of state regulation on the natural gas industry. Commentors should not limit themselves to the issues identified above but should bring to the Department's attention any state policy that unnecessarily prevents or impedes the use of natural gas. Commentors are requested to provide DOE with the citation for the state laws or regulations that they are commenting on, and, to the extent practicable, a copy of the mentioned regulations or laws. While quantitative assessments are not

required, they will help DOE to assess impacts.

Commentors are encouraged to provide specific examples of impacts caused by such state regulation. Because of the sensitive nature of certain issues, the Department will accept comments from parties anonymously. Comments should be submitted to the address indicated in the "ADDRESSES" section of this notice and should be identified on the outside envelope and on documents submitted with the designation "STATE REGULATION." Five (5) copies, if possible, should be submitted.

Any written comments received in response to this notice will be available for public inspection at DOE's Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, August 14, 1992.

John J. Easton, Jr.,

Assistant Secretary, Office of Domestic and International Energy Policy.

[FR Doc. 92-20050 Filed 8-20-92; 8:45 am]

BILLING CODE 6450-01-M



# Federal Register

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Friday  
August 21, 1992

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## Part VI

### Department of Commerce

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Patent and Trademark Office

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37 CFR Parts 1 and 2

Revision of Patent and Trademark Fees;  
Final Rule



## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Parts 1 and 2

[Docket No. 920401-2194]

RIN 0651-AA54

## Revision of Patent and Trademark Fees

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule and request for comments.

**SUMMARY:** The Patent and Trademark Office (PTO) is amending the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, to adjust certain patent and trademark fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation. The PTO is also establishing fees for providing public access to APS-Text in Patent and Trademark Depository Libraries (PTDLs), and for dividing a trademark application. In response to comments received from the Libraries in which they expressed their concerns about the administrative burdens of collecting fees from the public for use of APS-Text, the Commissioner is immediately suspending collection of that fee to provide additional time for the PTO to solicit input from the private sector on alternative collection methods, and other options for accessing patent search and retrieval in the Libraries.

**DATES:** *Effective Date:* October 1, 1992. Rule 1.21(p) will take effect on October 1, 1992 but will immediately be suspended by the Commissioner.

*Comment Date:* The PTO will accept comments on alternative collection methods, and other options for accessing patent search and retrieval in the PTDLs (37 CFR 1.21(p)) until January 4, 1993. The Office will provide written notice in the *Federal Register* and the *Official Gazette of the United States Patent and Trademark Office* thirty days before starting to collect fees for accessing APS-Text in the PTDLs.

**ADDRESSES:** Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231. Attention: Frances Michalkewicz, suite 507, Crystal Park 1, or by FAX to (703) 305-8436.

**FOR FURTHER INFORMATION CONTACT:** Frances Michalkewicz by telephone at (703) 305-8510 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** This rule change is designed to adjust the Patent and Trademark Office fees in accordance with the applicable provisions of title 35, United States Code, section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113), and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102-204).

## Background

## Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A 50 percent reduction in the fees paid under 35 U.S.C. 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is authorized by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and 41(b) to collect \$99 million in fiscal year 1993.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty.

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office*.

Subsection 41(i)(3) of title 35, United States Code, authorizes the Commissioner to establish reasonable fees for access to automated search systems of the PTO.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and

processing of an application for the registration of a trademark or other mark, and for all other services and materials furnished by the PTO relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the CPI.

Section 31 also allows new fee amounts to take effect thirty days after notice in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office*.

## Recovery Level Determinations

Fees have been adjusted for a planned recovery of \$486,000,000 in fiscal year 1993, as proposed in the Administration's budget request to the Congress.

Fees established by 35 U.S.C. 41(a) and 41(b) (patent statutory fees) may be adjusted on October 1, 1992, to reflect any fluctuations occurring during the previous 12 months in the CPI. The Office of Management and Budget (OMB) has determined that the PTO should use Consumer Price Index-U to adjust patent statutory fees. The Department of Labor's Consumer Price Index is made public approximately 21 days after the end of the month being calculated. The patent statutory fees are being adjusted by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12-month period beginning October 1, 1991.

The patent statutory fees established by rule (56 FR 65142) on December 13, 1991, are being adjusted by the projected changes in the CPI of 3.3 percent. Amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of \$100 or more were rounded to the nearest \$10. Fees between \$2 and \$99 were rounded to an even number so that the comparable small entity fee would be a whole number.

Patent statutory fees also are subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102-204. These provisions require the \$99 million be collected in fiscal year 1993 for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The \$99 million is deposited in a special account in the U.S. Treasury, and is reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process.

In establishing the 1993 patent statutory fees, the PTO applied the



projected Consumer Price Index-U rate 3.3 percent to the 1992 fees. The 1993 fees were rounded as explained above. Of the total amount of section 41(a) and (b) income expected to be collected in 1993, \$99 million must be deposited to the Fee Surcharge Fund.

Non-statutory patent service established under section 41(d) of title 35, United States Code, as amended, and PCT processing fees are being adjusted to recover planned costs in 1993, except in the case of three patent service fees set by statute. The three fees are assignment recording fees, printed patent copy fees and photocopy charge fees.

Trademark fees are being adjusted in fiscal year 1993, in the aggregate, to reflect changes over the prior 12 months in the CPI. The OMB has determined that the PTO should use Consumer Price Index-U to adjust trademark fees, which is made public by the Department of Labor approximately 21 days after the end of the month being calculated. The trademark fees are being adjusted, in the aggregate, by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12 month period beginning October 1, 1991.

The PTO is adjusting only two trademark fees in 1993: For filing an application (37 CFR 2.6(a)(1)) and for assignment records, abstract of title and certification (37 CFR 2.6(b)(7)). One new fee is being set for dividing an application (37 CFR 2.6(a)(19)). No other trademark fees are changing in 1993. The net effect of these changes is to increase trademark fees, in the aggregate, by 3.3 percent, the expected Consumer Price Index-U rate for the prior 12 month period.

#### Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent and trademark application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 75 percent, 50 percent and 25 percent, respectively. Trademark affidavit projections are based on filing trends for marks registered five to six years prior to 1993. Trademark renewal projections are based on marks registered 20 years prior to 1993. Service fee workloads follow linear trends from prior year activities.

#### Public Access to Automated Systems

In April 1989, the PTO began providing access to APS-Text in the Patent Search Room at its facilities in Arlington, Virginia. On February 12, 1990, the PTO began charging a fee for access to APS-Text in the Patent Search Room. In September 1991, the PTO began providing, without charge, APS-Text to 14 Patent and Trademark Depository Libraries (PTDLs) as a pilot test program. APS-Text provides users of the patent search files with a value added search tool that enables them to conduct more comprehensive searches.

Although many PTDLs believe that government information should be available to the public free of charge, the PTO's fiscal year 1993 budget does not include any general taxpayer funds, but requires that all of the expenses of the PTO be recovered through user fees. These expenses include the cost of providing APS-Text to the public, both in the Patent Search Room in Virginia and at the PTDLs. Continuation of this service in the PTDLs, without direct charge to the users of the automated system, would require support from all other customers who pay for products and services from the PTO.

A second issue raised by many PTDLs concerns the method that PTO would use to collect fees from the users of APS-Text in the PTDLs. Users of APS-Text in the Patent Search Room pay for use of the system directly to the PTO. PTDLs have commented that collecting fees would be an administrative burden for many, while some are legally precluded from collecting fees.

The PTO has a strong interest in expanding access to APS-Text to all PTDLs that wish to participate, but considers allocating user fees paid for other products and services to subsidize this effort to be inappropriate. Therefore, PTO concludes that establishment of a fee for access to APS-Text is necessary.

At the same time, PTO wants to limit the administrative burden imposed on the PTDLs to collect user fees. Therefore, PTO intends to enter into an agreement establishing a service bureau arrangement for administering the collection of fees at participating PTDLs. This arrangement provides one alternative for providing administrative services, but PTO is seeking others. Therefore, through this rulemaking notice, the PTO is soliciting alternatives from other organizations, including the libraries themselves, for providing the administrative services associated with APS-Text. Likewise, the Office would like to consider other options for accessing patent search and retrieval in

the PTDLs. The PTO will accept comment on alternative collection methods, and other options for accessing patent search and retrieval in the PTDLs until January 4, 1993.

In rule 1.21(p), the PTO is establishing a \$70 per connect hour fee to recover the cost of providing APS-Text Services in participating PTDLs, but the Commissioner is immediately suspending collection of that fee until alternative methods of collecting the fee from users of APS-Text in the PTDLs are identified. Although access to the 14 pilot PTDLs will continue for further evaluation purposes, the PTO will not extend access to additional PTDLs until a fee collection arrangement is established. Section 41(i)(3) of 35 U.S.C. states that if PTO establishes fees for access to the automated search system "a limited amount of free access shall be made available to users of the systems for purposes of education and training."

The \$70 per connect hour fee amount established by this rule is based on a calculation of the costs of PTO services, and preliminary cost estimates that were provided by a potential service bureau contractor. The cost elements for PTO include training; training software for personal computers (to be developed); manuals and documentation; additional mainframe CPU; and additional staff time for client support. The cost elements for services provided by the service bureau include billing, account administration, and user support; telecommunication costs to the network; and the Messenger Software enhancement fee.

After PTO has evaluated other options for a service bureau arrangement, a notice will be published in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office*. At that time, PTO will provide administrative procedures for public use of APS-Text in the PTDLs. Depending on responses to the solicitation for alternatives for providing the administrative services associated with APS-Text, the fee amount could be reduced at that time.

#### General Procedures

Any fee amount that is paid on or after October 1, 1992, would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A "Certificate of Mailing under section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8.



Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

A comparison of existing and revised fee amounts is included as an Appendix to this final rule.

In order to ensure clarity in the implementation of the revised fees, a discussion of specific sections is set forth below.

#### Discussion of Specific Rules

##### 37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a)-(d) and (f)-(j), is revised to adjust patent application filing fees to reflect fluctuations in the CPI.

##### 37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (b)-(g), and (m), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j), (n) and (o), is revised to adjust fees established therein to recover costs.

##### 37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a)-(c), is revised to adjust the issue fee for each original or reissue patent to reflect fluctuations in the CPI.

##### 37 CFR 1.19 Document Supply Fees

Section 1.19, subparagraph (b)(4) and paragraphs (f) and (h), is revised to adjust fees established therein to recover costs.

##### 37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (a), (c), and (i), is revised to adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)-(g), is revised to adjust fees established therein to reflect fluctuations in the CPI.

##### 37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, subparagraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3), and paragraphs (e) and (i), is revised to adjust fees established therein to recover costs.

Section 1.21, paragraph (p), is added to establish the fee for providing public access to the Automated Patent System full-text search (APS-Text) capability in Patent and Trademark Depository Libraries. The \$70.00 per connect hour fee would recover the marginal cost of providing the service to the public, including the cost for a service bureau to handle billing, account administration, and user support.

##### 37 CFR 1.26 Refunds

Section 1.26, paragraph (a), is revised to increase the minimum amount of a refund, without a request, from one dollar to twenty-five dollars in accordance with the Treasury Fiscal Manual, Volume One, Part Six, Chapter 3000.

Section 1.26, paragraph (c), is revised to provide for a refund of \$1,690 if the Commissioner decides not to institute reexamination proceedings. The \$1,690 refund would apply to those instances where the reexamination fee of \$2,250 under 37 CFR 1.20(c) was paid. The current \$1,635 refund would be made in those cases where the current \$2,180 reexamination fee was paid.

##### 37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

##### 37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, subparagraphs (a)(1), and (a)(2)(ii), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

##### 37 CFR 1.492 National Stage Fees

Section 1.492, subparagraphs (a)(1)-(a)(3), and paragraphs (b)-(d), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.492, subparagraph (a)(5), is revised to adjust the fee authorized by 35 U.S.C. 376 to recover costs.

##### 37 CFR 2.6 Trademark Fees

Section 2.6, subparagraphs (a)(1) and (b)(7), is revised to adjust the fees authorized by the Trademark (Lanham) Act of 1946 to reflect fluctuations in the CPI.

New § 2.6(a)(19), is added to establish a fee for dividing a trademark application in accordance with 37 CFR 2.87. Section 2.6(a)(19) is revised from the proposal by adding the words "file wrapper" to clarify that the fee amount is due for each new file wrapper created.

##### 37 CFR 2.87 Dividing an Application

Section 2.87, is revised to establish a fee for dividing an application into two or more applications. Currently, no fee is charged for the physical act of dividing an application. Experience to date reveals that the creation of so-called "divisional" applications is labor intensive. For that reason, and because the creation of a divisional application is a significant benefit to an applicant, the PTO will charge a fee for dividing an application. The fee will be due for each new file wrapper created.

Section 2.87, is revised to divide paragraph (a) into paragraphs (a) and (b), and renumber paragraphs (b) and (c) as (c) and (d).

##### Response to Comments on the Rules

A notice of proposed rulemaking to adjust patent and trademark fees in accordance with the proposed provisions of Public Law 102-204 was published in the *Federal Register* on May 20, 1992, at 57 FR 21536, and in the *Official Gazette* on May 26, 1992, at 1138 OG 58. Corrections were published in the *Federal Register* on June 2, 1992, at 57 FR 23257.

A public hearing was held on June 24, 1992. A total of 28 comments were received: 27 respondents submitted written comments and three people presented oral testimony (two of whom also submitted written comments) at the public hearing. Over half of the comments received represented the views of libraries. All of the written and oral comments were considered in adopting the rules set forth herein.

**Comment:** Two people claimed that the proposed fees for filing an application under the Patent Cooperation Treaty (PCT) is discriminatory against applicants who file under the PCT route.

**Response:** The PTO is undertaking a thorough analysis of all PCT fees. The results of this analysis, and the recommendations concerning PTO's fee structure to be made to the Secretary of Commerce by the Advisory Commission on Patent Law Reform, will be taken into consideration when PTO proposes the fiscal year 1994 fee adjustments.

**Comment:** One respondent, although not objecting to the proposed 3.3 percent fee increase, suggested that the PTO may be understanding its projected income from maintenance fees with could be used to offset inflationary increases and possibly reduce PCT fees.

**Response:** When maintenance fees first were imposed, the Office looked at historical payment trends experienced by other offices, such as the European



Patent Office. The PTO conservatively projected the number of maintenance fees to be paid for two reasons. First, there is not a long history of maintenance fee payments on which to base income projections; for example, second stage maintenance fees only recently have started to come due, and third stage maintenance fees will not become due for many patent owners until 1995. Second, the percentage of patent owners paying second stage maintenance fees in recent months has declined from the renewal rate that was experienced during the first year that second stage maintenance fees were paid. Therefore, PTO is properly conservative in its maintenance fee payment projections. We will conduct a comprehensive analysis of projected maintenance fee payments prior to proposing the fiscal year 1994 fee adjustment.

*Comment:* Eighteen respondents opposed establishment of fees for the public to access APS-Text at the Patent and Trademark Depository Libraries, primarily because the public has a right to free access to patent information. One person asked about administrative procedures for providing APS-Text in the PTDs, and suggested that CD-ROM products continue to be made available free of charge and access for APS-Text be kept as low as possible.

*Response:* As a fully fee-funded agency, the costs to the PTO of providing access to APS-Text in the 74 Patent and Trademark Depository Libraries (PTDLs) would have to be borne either by the individual users of the system, or by all users of the patent system (e.g., patent applicants). In June 1988, the PTO published in 53 FR 23677 the results of comments solicited on alternatives for funding access to the PTO's automated systems. In response, the PTO received 21 comments, 12 of which advocated the use of taxpayer revenues, and seven supported at least some reliance on user fees. The latter based their decisions on the reality of budget deficit problems; the inequity of providing taxpayer funds to subsidize on-line searchers who charge fees for their services; and the need to have an equitable fee structure that applies throughout the United States.

The PTO has a strong interest in expanding access to APS-Text to all PTDs that wish to participate, with the least amount of administrative burden to the PTDs, but considers allocating user fees paid for other products and services to subsidize this effort to be inappropriate. Therefore, the PTO is establishing a fee of \$70 per connect hour for accessing APS-Text in the

PTDLs, which includes the cost of having a service bureau provide billing, account administration, and user support. However, the Commissioner is immediately suspending collection of that fee to provide additional time to solicit comments through this rulemaking for providing the administrative services associated with APS-Text. Likewise, the Office would like to consider other options for accessing patent search and retrieval in the PTDs. The Office will publish a notice in the *Federal Register* and the *Official Gazette of the Patent and Trademark Office* thirty days before it begins collecting a fee for public access to APS-Text in the PTDs.

*Comment:* One respondent claimed that proposed 37 CFR 1.21(p) is not in accord with the rulemaking provision of 5 U.S.C. 553(b) which requires that the issues involved be described in the notice of proposed rulemaking.

*Response:* The Notice of Proposed Rulemaking 57 FR 21536, referenced 35 U.S.C. 41(i)(3) which authorizes the Commissioner to establish reasonable fees for access to automated search systems of the PTO. Further in the notice at 57 FR 21537, under the discussion of the proposed revision to 37 CFR 1.21, it was stated that the proposed \$40.00 fee would recover the PTO's estimated marginal cost of providing the service to the PTDs. The notice also indicated the PTO was investigating the use of a contract service bureau to provide access in which case the fee would be approximately \$70.00. This fully described the issue involved in the proposed rule change.

*Comment:* Two respondents commented on the administrative burden caused by a change to the fee structure at this time particularly in light of prior fee changes and the small amount of the adjustment.

*Response:* The PTO proposed to adjust its fees because operating costs have increased over the past year. The Commissioner is authorized to adjust patent and trademark fees on October 1, 1992 and every year thereafter to reflect fluctuations in the Consumer Price Index over the prior twelve months. Future changes are expected to occur annually on October 1st. The fee increases that will be implemented on October 1, 1992, are expected to generate \$15.1 million. Without this revenue, PTO would be forced to make cuts in patent and trademark operations that would affect the quality of examination.

*Comment:* One person expressed concern about the quality and timeliness of services for which new or increased

fees are proposed, complaining specifically of the delay in receiving an official receipt when a trademark application is divided and in the recording of assignments.

*Response:* A major objective of the Office is to assure continuous quality improvements throughout all operations. The Office has taken steps to address the areas of concern identified.

*Comment:* One organization and one person objected to the PTO's sole reliance on fee income, particularly for funding automation development costs.

*Response:* The Omnibus Budget Reconciliation Act of 1990 requires that a user fee surcharge on certain patent fees replace taxpayer funds for the five year period 1991-1995. Whether PTO should receive funds from other sources in future fiscal years is beyond the scope of the rule package.

The automation programs, which are funded from user fees, are designed to improve the quality and timeliness of PTO services and products, and to discontinue reliance on manual processes and paper references.

*Comment:* One person said that small entities do not benefit from the 50 percent reduction to certain patent fees, because many small companies, particularly those in high technology areas, must license their patent rights and thus pay large entity status fees.

*Response:* The purpose of the small entity subsidy is to ensure that individual investors, small businesses and non-profit organizations are not barred from using the patent system because of the PTO's fee structure. Once a small entity assigns the rights to a patent application or a patent to a large entity, presumably receiving compensation from the large entity, the reduced fee amounts no longer apply.

*Comment:* One organization said that trademark fees appear to be justified but PTO must ensure that trademark functions are being discharged in the most efficient and economical manner. For example, the organization questioned whether it is efficient for the Office to continue to maintain a paper search file and to continue to pay the General Service Administration (GSA) for building services.

*Response:* The Office is committed to ensuring that its trademark functions are being discharged effectively and, as part of its quality improvement program, is currently reviewing various work-related processes. No decision has yet been made as to when the paper search file will be eliminated and no such decision will be made until the public has been given an opportunity to comment. The Office has asked GSA to



review the level of charges assessed in light of current market conditions.

#### Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354); Executive Orders 12291 and 12612; and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change would not have a significant adverse impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change increases fees by changes in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than \$100 million. There would be no major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### List of Subjects

##### 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

##### 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, chapter I, as set forth below.

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a)–(d), the parenthetical following paragraph (d), paragraphs (f)–(j), and the note at the end of the section to read as follows:

### § 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f)).....\$355.00  
By other than a small entity.....\$710.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....\$37.00  
By other than a small entity.....\$74.00

(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f)).....\$11.00  
By other than a small entity.....\$22.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:

By a small entity (§ 1.9(f)).....\$115.00  
By other than a small entity.....\$230.00

(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(f) For filing each design application:

By a small entity (§ 1.9(f)).....\$145.00  
By other than a small entity.....\$290.00

(g) Basic fee for filing each plant application:

By a small entity (§ 1.9(f)).....\$240.00  
By other than a small entity.....\$480.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f)).....\$355.00  
By other than a small entity.....\$710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f)).....\$37.00  
By other than a small entity.....\$74.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. [Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes]:

By a small entity (§ 1.9(f)).....\$11.00  
By other than a small entity.....\$22.00

Note: See §§ 1.445, 1.482 and 1.492 for international application filing and processing fees.

3. Section 1.17 is amended by revising paragraphs (b)–(g), (j), (m)–(o) to read as follows:

### § 1.17 Patent application processing fees.

(b) Extension fee for response within second month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....\$180.00  
By other than a small entity.....\$360.00

(c) Extension fee for response within third month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....\$420.00  
By other than a small entity.....\$840.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....\$660.00  
By other than a small entity.....\$1,320.00

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f)).....\$135.00  
By other than a small entity.....\$270.00

(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9(f)).....\$135.00  
By other than a small entity.....\$270.00

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f)).....\$115.00  
By other than a small entity.....\$230.00

(j) For filing a petition to institute a public use proceeding under

§ 1.292.....\$1,350.00

(m) For filing a petition:



(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent:  
By a small entity (§ 1.9(f)).....\$585.00  
By other than a small entity.....\$1,170.00

(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—\$820.00 reduced by the amount of the application basic filing fee paid

(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—\$1,640.00 reduced by the amount of the application basic filing fee paid

4. Section 1.18 is amended by revising paragraphs (a)–(c) to read as follows:

#### § 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f)).....\$585.00  
By other than a small entity.....\$1,170.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f)).....\$205.00  
By other than a small entity.....\$410.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f)).....\$295.00  
By other than a small entity.....\$590.00

5. Section 1.19 is amended by revising paragraph (b)(4) and paragraphs (f) and (h) to read as follows:

#### § 1.19 Document supply fees.

(b) \* \* \*  
(4) For assignment records, abstract of title and certification,  
per patent.....\$25.00

(f) Uncertified copy of a non-United States patent document,  
per document.....\$25.00

(h) Additional filing receipts; duplicate; or corrected due to:  
applicant error.....\$25.00

6. Section 1.20 is amended by revising paragraphs (a), (c), (e)–(g) and (i) to read as follows:

#### § 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake:  
(§ 1.323).....\$100.00

(c) For filing a request for reexamination:

(§ 1.510(a)).....\$2,250.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant

By a small entity (§ 1.9(f)).....\$465.00  
By other than a small entity.....\$930.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant

By a small entity (§ 1.9(f)).....\$935.00  
By other than a small entity.....\$1,870.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant

By a small entity (§ 1.9(f)).....\$1,410.00  
By other than a small entity.....\$2,820.00

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the

Commissioner to have been unavoidable.....\$620.00

7. Section 1.21 is amended by revising paragraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3) (e), and (i) and adding paragraph (p) to read as follows:

#### § 1.21 Miscellaneous fees and charges.

(a) \* \* \*  
(1) For admission to examination for registration to practice:  
fee payable upon application.....\$300.00

(5) For review of a decision of the Director of Enrollment and Discipline under  
§ 10.2(c).....\$130.00

(6) For requesting regarding of an examination under  
§ 10.7(c).....\$130.00

(b) \* \* \*  
(2) Service charge for each month when the balance at the end of the month is:  
Below \$1,000.....\$25.00

(3) Service charge for each month when the balance at the end of the

month is below \$300 for restricted subscription deposit accounts used exclusively for:

Subscription order of patent copies as issued.....\$25.00

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a:

National patent application.....\$40.00

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale:

Each application or patent.....\$25.00

(p) Library service: marginal cost for providing to a Patent and Trademark Depository Library access to Automated Patent System (APS) full-text search capability:

Per hour of terminal session time, including print time.....\$70.00

8. Section 1.26 is amended by revising paragraphs (a) and (c) to read as follows:

#### § 1.26 Refunds.

(a) Money paid in excess will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amount; amounts over twenty-five dollars may be returned by check, or if requested, by credit to a deposit account.

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of \$1,690 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.455 is amended by revising paragraphs (a) to read as follows:

#### § 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee:



(see 35 U.S.C. 361(d) and PCT Rule

14).....\$200.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed.....\$620.00

(ii) A corresponding prior United States national application with basic filing fee has been filed.....\$410.00

(3) A supplemental search fee when required:

Per additional invention.....\$170.00

10. Section 1.482 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(2)(ii) to read as follows:

#### § 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of.....\$450.00

(ii) Where an International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of.....\$670.00

(2) \* \* \*

(iii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office,.....\$230.00

11. Section 1.492 is amended by revising paragraphs (a)(1)-(a)(3), (a)(5), paragraphs (b)-(d), and the parenthetical following paragraph (d) to read as follows:

#### § 1.492 National stage fees.

(a) \* \* \*

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....\$320.00  
By other than a small entity.....\$640.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the

international application to the United States Patent and Trademark Office as an international Searching Authority:

By a small entity (§ 1.9(f)).....\$355.00  
By other than a small entity.....\$710.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....\$475.00  
By other than a small entity.....\$950.00

(5) Where search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f)).....\$415.00  
By other than a small entity.....\$830.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....\$37.00  
By other than a small entity.....\$74.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f)).....\$11.00  
By other than a small entity.....\$22.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)).....\$115.00  
By other than a small entity.....\$230.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by revising paragraphs (a)(1) and (b)(7) and adding paragraph (a)(19) to read as follows:

#### § 2.6 Trademark fees.

(a) Trademark process fees.

(1) For filing an application, per class.....\$210.00

(19) Dividing an application, per new application (file wrapper) created.....\$100.00

(b) Trademark service fees.

(7) For assignment records, abstract of title and certification, per registration.....\$25.00

3. Section 2.87 is revised to read as follows:

#### § 2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) In the case of a request to divide out one or more entire classes from an application, only the fee under paragraph (a) of this section will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, an application filing fee for each new separate application to be created by the division must be submitted, together with the fee under paragraph (a) of this section. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(d) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application" should appear at the top of the first page of the paper.

Dated: August 17, 1992.

Douglas B. Comer,  
Acting Assistant Secretary and Acting  
Commissioner of Patents and Trademarks.



Note.—The following appendix will not appear in the Code of Federal Regulations.

# APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

37 CFR Sec.	Description	Dec. 1991	Oct. 1992
1.16(a)	Basic Filing Fee	\$690	\$710
1.16(a)	Basic Filing Fee (Small Entity)	345	355
1.16(b)	Independent Claims	72	74
1.16(b)	Independent Claims (Small Entity)	36	37
1.16(c)	Claims in Excess of 20	20	22
1.16(c)	Claims in Excess of 20 (Small Entity)	10	11
1.16(d)	Multiple Dependent Claims	220	230
1.16(d)	Multiple Dependent Claims (Small Entity)	110	115
1.16(e)	Surcharge—Late Filing Fee	130	130
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	65
1.16(f)	Design Filing Fee	280	290
1.16(f)	Design Filing Fee (Small Entity)	140	145
1.16(g)	Plant Filing Fee	460	480
1.16(g)	Plant Filing Fee (Small Entity)	230	240
1.16(h)	Reissue Filing Fee	690	710
1.16(h)	Reissue Filing Fee (Small Entity)	345	355
1.16(i)	Reissue Independent Claims	72	74
1.16(i)	Reissue Independent Claims (Small Entity)	36	37
1.16(j)	Reissue Claims in Excess of 20	20	22
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	10	11
1.17(a)	Extension—First Month	110	110
1.17(a)	Extension—First Month (Small Entity)	55	55
1.17(b)	Extension—Second Month	350	360
1.17(b)	Extension—Second Month (Small Entity)	175	180
1.17(c)	Extension—Third Month	810	840
1.17(c)	Extension—Third Month (Small Entity)	405	420
1.17(d)	Extension—Fourth Month	1,280	1,320
1.17(d)	Extension—Fourth Month (Small Entity)	640	660
1.17(e)	Notice of Appeal	260	270
1.17(e)	Notice of Appeal (Small Entity)	130	135
1.17(f)	Filing a Brief	260	270
1.17(f)	Filing a Brief (Small Entity)	130	135
1.17(g)	Request for Oral Hearing	220	230
1.17(g)	Request for Oral Hearing (Small Entity)	110	115
1.17(h)	Petition—Not All Inventors	130	130
1.17(h)	Petition—Correction of Inventorship	130	130
1.17(h)	Petition—Decision on Questions	130	130
1.17(h)	Petition—Suspend Rules	130	130
1.17(h)	Petition—Expedited License	130	130
1.17(h)	Petition—Scope of License	130	130
1.17(h)	Petition—Retroactive License	130	130
1.17(h)	Petition—Refusing Maintenance Fee	130	130
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	130
1.17(h)	Petition—Interference	130	130
1.17(h)	Petition—Reconsider Interference	130	130
1.17(h)	Petition—Late Filing of Interference	130	130
1.20(b)	Petition—Correction of Inventorship	130	130
1.17(h)	Petition—Refusal to Publish SIR	130	130
1.17(i)(1)	Petition—For Assignment	130	130
1.17(i)(1)	Petition—For Application	130	130
1.17(i)(1)	Petition—Late Priority Papers	130	130
1.17(i)(1)	Petition—Suspend Action	130	130
1.17(i)(1)	Petition—Divisional Reissues to Issue Separately	130	130
1.17(i)(1)	Petition—For Interference Agreement	130	130
1.17(i)(1)	Petition—Amendment After Issue	130	130
1.17(i)(1)	Petition—Withdrawal After Issue	130	130
1.17(i)(1)	Petition—Defer Issue	130	130
1.17(i)(1)	Petition—Issue to Assignee	130	130
1.17(i)(1)	Petition—Accord a Filing date Under § 1.53	130	130
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.60	130	130
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.62	130	130
1.17(i)(2)	Petition—Make Application Special	130	130
1.17(j)	Petition—Public Use Proceeding	1,310	1,350
1.17(k)	Non-English Specification	130	130
1.17(l)	Petition—Revive Abandoned Appl	110	110
1.17(l)	Petition—Revive Abandoned Appl (Small Entity)	55	55
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	1,130	1,170
1.17(m)	Petition—Revive Unintentionally Abandoned Appl (Small Entity)	565	585
1.17(n)	SIR—Prior to Examiner's Action	790	820
1.17(o)	SIR—After Examiner's Action	1,580	1,640
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)		200



## APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Dec. 1991	Oct. 1992
1.18(a)	Issue Fee	1,130	1,170
1.18(a)	Issue Fee (Small Entity)	585	585
1.18(b)	Design Issue Fee	400	410
1.18(b)	Design Issue Fee (Small Entity)	200	205
1.18(c)	Plant Issue Fee	570	590
1.18(c)	Plant Issue Fee (Small Entity)	285	295
1.19(a)(1)(i)	Copy of Patent	3	3
1.19(a)(1)(ii)	Patent Copy—Expedited Local Service	6	6
1.19(a)(1)(iii)	Patent Copy Ordered Via EOS—Expedited Service	25	25
1.19(a)(2)	Plant Patent Copy	12	12
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	24	24
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	12	12
1.19(b)(1)(ii)	Certified Copy of Patent Application as Filed, Expedited	24	24
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	150	150
1.19(b)(3)	Cert of Uncert. Copies of Office Records, per Document	25	25
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	20	25
1.19(c)	Library Service	50	50
1.19(d)	List of Patents in Subclass	3	3
1.19(e)	Uncertified Statement-Status of Maintenance Fee Payment	10	10
1.19(f)	Copy of Non-U.S. Patent Document	12	25
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	25
1.19(h)	Duplicate or Corrected Filing Receipt	20	25
1.20(a)	Certificate of Correction	70	100
1.20(c)	Reexamination	2,180	2,250
1.20(d)	Statutory Disclaimer	110	110
1.20(d)	Statutory Disclaimer (Small Entity)	55	55
1.20(e)	Maintenance Fee—3.5 Years	900	930
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	450	465
1.20(f)	Maintenance Fee—7.5 Years	1,810	1,870
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	905	935
1.20(g)	Maintenance Fee—11.5 Years	2,730	2,820
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,365	1,410
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	130
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	65
1.20(i)	Surcharge—Maintenance After Expiration	600	620
1.20(j)	Extension of Term of Patent	1,000	1,000
1.21(a)(1)	Admission to Examination	290	300
1.21(a)(2)	Registration to Practice	100	100
1.21(a)(3)	Reinstatement to Practice	15	15
1.21(a)(4)	Certificate of Good Standing	10	10
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	20
1.21(a)(5)	Review of Decision of Director, OED	120	130
1.21(a)(6)	Regrading of Examination	120	130
1.21(b)(1)	Establish Deposit Account	10	10
1.21(b)(2)	Service Charge Below Minimum Balance	20	25
1.21(b)(3)	Service Charge Below Minimum Balance	20	25
1.21(c)	Filing a Disclosure Document	10	10
1.21(d)	Box Rental	50	50
1.21(e)	International Type Search Report	35	40
1.21(g)	Self-Service Copy Charge	25	25
1.21(h)	Recording Patent Property	40	40
1.21(i)	Publication in the OG	20	25
1.21(j)	Labor Charges for Services	30	30
1.21(k)	Unspecified Other Services	( <sup>1</sup> )	( <sup>1</sup> )
1.21(l)	Retaining Abandoned Application	130	130
1.21(m)	Processing Returned Checks	50	50
1.21(n)	Handling Fee—Incomplete Application	130	130
1.21(o)	Terminal Use APS-TEXT	40	40
1.21(p)	Terminal Use APS-TEXT by the PTDL's		70
1.24	Coupons for Patent Copies	3	3
1.296	Handling Fee—Withdrawal SIR	130	130
1.445(a)(1)	Transmittal Fee	190	200
1.445(a)(2)(i)	PCT Search Fee—No U.S. Application	600	620
1.445(a)(2)(ii)	PCT Search Fee—Prior U.S. Application	400	410
1.445(a)(3)	Supplemental Search	160	170
1.482(a)(1)(i)	Preliminary Exam Fee	440	450
1.482(a)(1)(ii)	Preliminary Exam Fee	650	670
1.482(a)(2)(i)	Additional Invention	140	140
1.482(a)(2)(ii)	Additional Invention	220	230
1.492(a)(1)	Preliminary Examining Authority	620	640
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	310	320
1.492(a)(2)	Searching Authority	690	710
1.492(a)(2)	Searching Authority (Small Entity)	345	355
1.492(a)(3)	PTO Not ISA nor IPEA	920	950
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	460	475
1.492(a)(4)	Claims—IPEA	90	90
1.492(a)(4)	Claims—IPEA (Small Entity)	45	45
1.492(a)(5)	Filing with EPO/JPO Search Report	800	830
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	400	415
1.492(b)	Claims—Extra Individual (Over 3)	72	74



## APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

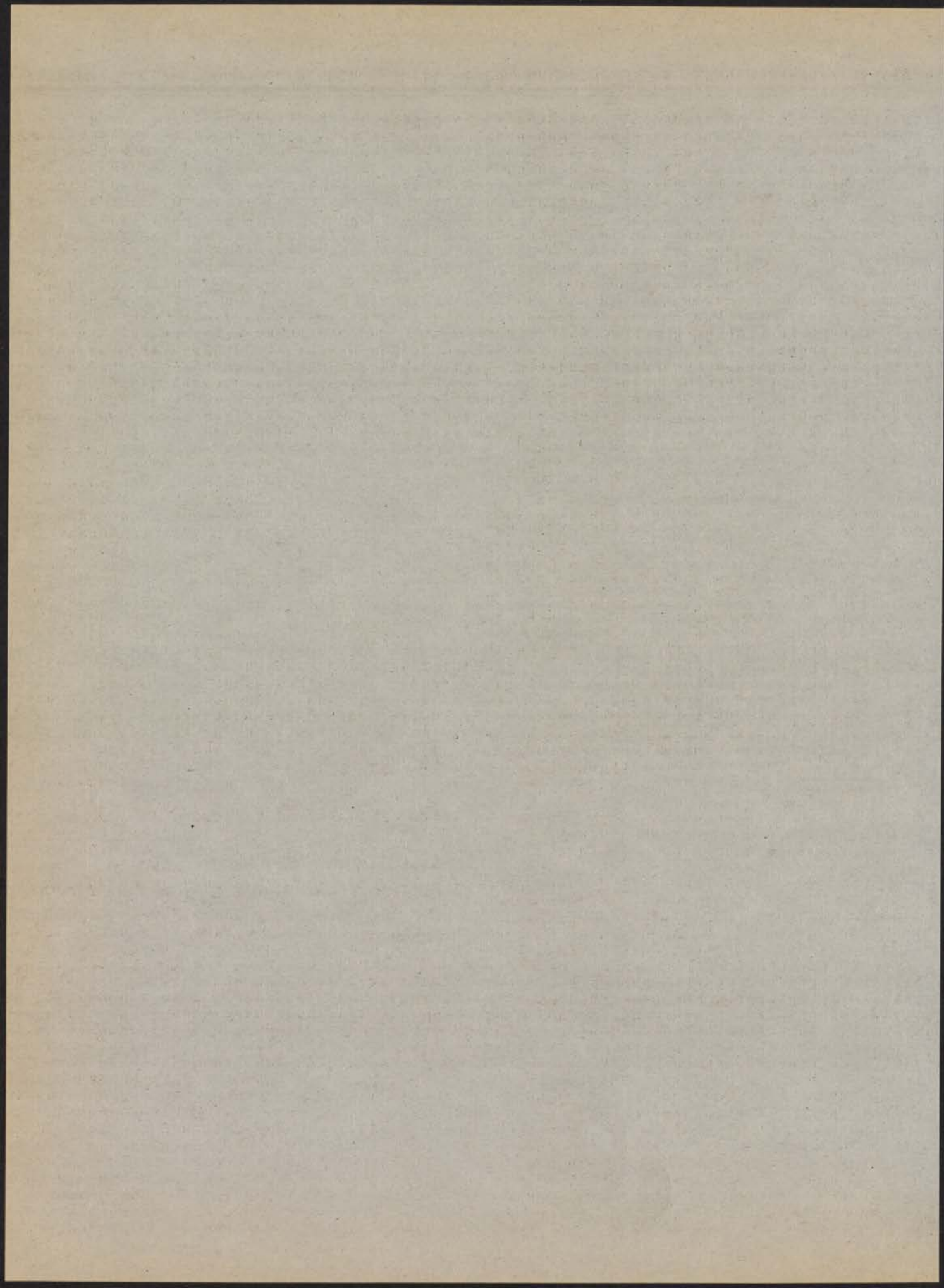
37 CFR Sec.	Description	Dec. 1991	Oct. 1992
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	36	37
1.492(c)	Claims—Extra Total (Over 20)	20	22
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	10	11
1.492(d)	Claims—Multiple Dependents	220	230
1.492(d)	Claims—Multiple Dependents (Small Entity)	110	115
1.492(e)	Surcharge	130	130
1.492(e)	Surcharge (Small Entity)	65	65
1.492(f)	English Translation—After 20 Months	130	130
2.6(a)(1)	Application for Registration, Per Class	200	210
2.6(a)(2)	Amendment to Allege Use, Per Class	100	100
2.6(a)(3)	Statement of Use, Per Class	100	100
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	100
2.6(a)(5)	Application for Renewal, Per Class	300	300
2.6(a)(6)	Surcharge for late Renewal, Per Class	100	100
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	100
2.6(a)(8)	Issuing New Certificate of Registration	100	100
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	100
2.6(a)(10)	Filing Disclaimer to Registration	100	100
2.6(a)(11)	Filing Amendment to Registration	100	100
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	100
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	100
2.6(a)(14)	Filing Affidavit Under Section 8 & 15, Per Class	200	200
2.6(a)(15)	Petitions to the Commissioner	100	100
2.6(a)(16)	Petition to Cancel, Per Class	200	200
2.6(a)(17)	Notice of Opposition, Per Class	200	200
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	100
2.6(a)(19)	Dividing an Application, Per New Application Created		100
2.6(b)(1)(i)	Copy of Registered Mark	3	3
2.6(b)(1)(ii)	Copy of Registered Mark, Expedited	6	6
2.6(b)(1)(iii)	Copy of Registered Mark Ordered Via EOS, Expedited Svc	25	25
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	12	12
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	24	24
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	50
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	10	10
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	20	20
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	25
2.2(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	40
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	25
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	20	25
2.6(b)(8)	Terminal Use T—Search	40	40
2.6(b)(9)	Self-Service Copy Charge	25	25
2.6(b)(10)	Labor Charges for Services	30	30
2.6(b)(11)	Unspecified Other Services	( <sup>1</sup> )	( <sup>1</sup> )
1.19(g)	Comparing and Certifying Copies, per Document, per Copy	25	25
1.24	Trademark Coupons	3	3

<sup>1</sup> Actual cost.

[FR Doc. 92-19968 Filed 8-20-92; 8:45 am]

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# Registered Federal Land

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Friday  
August 21, 1992

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## Part VII

### Department of the Interior

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#### Fish and Wildlife Service

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##### 50 CFR Part 20

Migratory Bird Hunting; Final Frameworks  
for Early-Season Migratory Bird Hunting  
Regulations; Final Rule

Migratory Bird Hunting; Proposed  
Frameworks for Late-Season Migratory  
Bird Hunting Regulations; Proposed Rule



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

RIN 1018-AA24

## Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes final early-season frameworks from which States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 1992-93 migratory bird hunting season. These early seasons may open prior to October 1, 1992. The effects of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the *Federal Register* as amendments to §§ 20.101 through 20.106, and § 20.109 of title 50 CFR part 20.

**EFFECTIVE DATE:** This rule takes effect on August 21, 1992.

**ADDRESSES:** Season selections from States and Territories are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:**

## Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the *Federal Register* (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 *Federal Register* to review the status of migratory shore and upland game birds.

Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the *Federal Register* (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992-93 season. This rulemaking is the fourth in the series, and establishes final frameworks for early-season migratory bird hunting regulations for the 1992-93 season.

## Review of Public Comments and the Service's Response

As of July 23, 1992, the Service had received 60 written comments; 28 of these specifically addressed early-season issues. Early-season comments are summarized and discussed in the order used in the May 8, 1992, *Federal Register* (57 FR 19865). Only the numbered items pertaining to early seasons for which comments were received are included.

## General

**Council Recommendations:** The Central Flyway Council recommended no changes in frameworks for those regulations not addressed by other Central Flyway Council recommendations.

**Public Hearing Comments:** Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, supported the regulations proposals for the 1992-1993 hunting seasons and commended the Service for its efforts to present information for public comment.

Ms. Susan Hagood, representing the Humane Society of the United States, suggested that all seasons for migratory birds should open at noon during midweek to reduce the high harvest associated with Saturday openings.

Mr. Wayne Pacelle, representing the Fund for Animals, provided comment on the regulatory process and suggested that the Service attempt to involve the public to a greater extent. He stated his organization opposed the killing of wildlife through sport hunting and expressed the view that the interests of non-hunters were not considered to the same extent as those of hunters.

**Written Comments:** The Illinois Department of Conservation requested an extension of the comment period until August 5, 1992. They claimed that the current comment period does not allow their staff sufficient time to conduct a careful review of the proposed rule. Furthermore, the current comment period does not provide an opportunity for a coordinated response

by the Giant-Canada-Goose Committee of the Mississippi Flyway Technical Section.

The Wisconsin Department of Natural Resources also requested that the Service consider a longer comment period for the 1992 early hunting seasons to allow Flyway Councils to comment on the proposed modifications to the criteria for special Canada goose seasons.

The Humane Society of the United States requested that all seasons open at noon during midweek, so as to reduce the large kill associated with traditional Saturday openings.

A local organization from Massachusetts requested that shooting hours remain at one-half hour before sunrise to sunset for all species.

Eleven individuals expressed support for the migratory bird hunting regulations and encouraged the Service to continue providing this recreational opportunity while properly managing the resource.

**Service Response:** The Service appreciates the support it has received for its efforts to properly manage the migratory bird resource. In regard to opening dates, the Service focuses its concern on harvest impacts upon populations and, therefore, does not specify which day of the week any season should open; that choice is left to the States. The Service notes that even if framework dates opened mid-week, States would still have the option of delaying opening until a weekend. These frameworks provide for shooting hours of one-half hour before sunrise until sunset for all species and seasons unless specified otherwise.

In regard to the regulations-development process, the current process has been designed to provide the general public with the maximum opportunity possible to comment on the annual migratory bird hunting regulations. It also allows the Service to work cooperatively with state wildlife agencies and other organizations in the management of this resource. Regulations governing public participation, announcement of meetings, and maintenance of a public file are found in 50 CFR part 20 subpart N—"Special Procedures for Issuance of Annual Hunting Regulations." A brief synopsis of the regulations-development process was given in the September 26, 1991, *Federal Register* (at 56 FR 49114). The Service believes that the current process is open and receptive to all public comments. There is ample opportunity for the public to provide comments regarding the development of regulations. However, the Service



welcomes suggested improvements to the process.

In regard to the request for an extension of the comment period, the Service believes this is not warranted. The early-season comment period, which opened about 2 months later than normal, still provided ample time for comment during the 73 days between May 8 and July 20. In addition, specific Service proposals were announced on June 25 which allowed sufficient time for States and Councils to respond. The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed early-season rulemaking was published on July 10, 1992, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the close of the comment period time would be of the essence. That is, if there was a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions. The major concern regarding the early-season comment period appears to be the Special Canada goose season criteria. Because these criteria govern both early and late seasons, as stated in the Service response to comments under item 4. *Canada Geese*, comments will be considered through August 30.

#### 1. Ducks

##### iii. September Teal Seasons

**Council Recommendations:** The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended interim criteria for reinstatement of the September teal seasons as follows:

"Breeding population indices were viewed as the most appropriate basis for development of interim guidelines for reinstatement of September teal seasons. Final guidelines for September teal seasons should include a range of criteria, including breeding populations, habitat conditions, harvest rates, and development of an approach to evaluate teal harvest south of the United States."

"In the interim (1992), reinstatement of September teal seasons is recommended if the breeding population is sustained at 1991 levels (3.779 +/- 0.245 million). This criterion includes consideration of the precision of population surveys for blue-

winged teal. Thus, a breeding population of 3.5 million breeding blue-winged teal would be considered sufficient to recommend reinstatement of the season for 1992. The Service and the Mississippi Flyway Council should jointly develop final implementation criteria (in conjunction with development of stabilized regulations strategies) by March 1994."

The Central Flyway Council recommended reinstatement of the September teal season when the 3-year running average of the breeding population index equals or exceeds 3 million. The season length and daily bag limits should be the same as used in past years—a 9-day season with a 4-bird daily bag limit. The September teal season should be reviewed if the 3-year running average of the breeding population index falls below 3 million.

**Public Hearing Comments:** Ms. Susan Hagood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species. She also opposed special seasons in an effort to further reduce hunter participation. Mr. Wayne Pacelle, representing the Fund for Animals, was distressed over the proposed reopening of the September teal season.

**Written Comments:** The Lower-Region Regulations Committee of the Mississippi Flyway Council and the Central Flyway's Consultants supported a change in shooting hours to accommodate an evaluation of the impact of presunrise shooting hours on nontarget duck species.

The Minnesota Department of Natural Resources stated that allowing nonproduction states an extra 9-day teal season, if the opening framework date for the regular duck season is delayed later than the Saturday nearest October 1, is unacceptable. It aggravates inequities and seriously contradicts the Service's responsibility to provide a fair distribution of hunting opportunity. They further commented that States selecting the September teal season should fund research to evaluate blue-winged teal harvest in South America and additional teal banding to ensure adequate sample size and distribution of banding. They also remarked that a reward-band study would be appropriate to determine reporting rates for teal. They further stated that the bag limit during special duck seasons should not exceed the bag limit during regular seasons.

The Wisconsin Department of Natural Resources supported the concept of September teal seasons to allow additional harvest of this species. However, they feel that breeding populations must recover to meet the population objective established in the North American Waterfowl

Management Plan before reinstatement of these seasons. They believe the Service should address whether the harvest of adult female blue-winged teal during the mid-1980's was within acceptable levels. They also indicated that the harvest of blue-winged teal south of the U.S. border may be substantial, and thus harvest rates may be considerably higher than currently indicated. These considerations should be researched further and management based on previous assumptions should be restrained until sufficient data have been collected and analyzed. They also indicated that not only has important breeding habitat been subject to recent drought, but migrational and wintering habitats are also being destroyed. Important habitats are being degraded and destroyed south of the U.S. and certain pesticides prohibited in the U.S. continue to be used in some other countries.

They later expressed their concern about the inequitable hunting opportunity and suggested curtailing the number of days offered during the regular season for States participating in September teal seasons or offering additional days during the regular season to those States not participating in September teal seasons. They are also concerned about the lack of any significant evaluation of incidental kill of nontarget species.

The Iowa Department of Natural Resources stated that the special teal season, if reinstated, should be more conservative with fewer days and a bag limit that does not exceed the bag limit in effect during the regular duck season. They felt surprised that this special season can be held without a more thorough, statistically sound, evaluation of its impacts on blue-winged teal and other duck populations. Reinstating the September teal season in 1992, only 2 years after the lowest breeding population on record, is not a good idea. But liberalizing duck hunting regulations in some States, by reinstating the teal season, without offering some equitable liberalization of duck hunting regulations for northern States, is unacceptable. Northern States have spent too much time and money trying to enhance and preserve waterfowl breeding habitat to be ignored in this proposal. Iowa should be allowed to have a September duck season if the teal season is granted to other States. Northern states must be offered an equitable liberalization of duck hunting regulations, or States that choose to have a special teal season should subtract teal-season days from the length of their regular duck season.



The North American Wildlife Foundation opposed the reopening of September teal seasons. They stated that a breeding population of 3 million blue-winged teal should not be sufficient to reopen the season, that the Canadian Wildlife Service and northern States should be consulted prior to this action, and that they were concerned about the message reinstatement of these seasons would carry to waterfowlers in regards to population status of ducks.

The Humane Society of the United States requested that all special seasons be discontinued.

A local organization and four individuals in Texas and an individual from Illinois requested that the Service reinstate the September teal season. A petition with 1080 signatures was received from a local organization in Louisiana also requesting that the Service reinstate the September teal season.

A local organization from Massachusetts requested a special September teal season if the numbers remain equal to last year or improve.

An individual from Wisconsin opposed reinstatement of the September teal season. He suggested that a 1-year increase in breeding populations was not significant, that harvests south of the U.S. by indigenous peoples was excessive, that the special season will result in additive mortality that will exceed recruitment, and that populations should increase by at least 50 percent before any special season is initiated.

**Service Response:** In cooperation with the Flyway Councils, the Service developed the following interim criteria which will govern these September teal seasons until a stabilized-regulations harvest strategy for duck hunting is completed:

1. A September teal season will be permitted annually whenever the breeding population exceeds 3.3 million blue-winged teal.
2. Seasons of up to 9 days in length may be held during September 1-30 in non-production States of the Mississippi and Central Flyways, with a daily bag limit not to exceed 4 teal.
3. If breeding populations of blue-winged teal fall below 3.3 million or if band-recovery rates exceed those with which we have experience, a more conservative harvest strategy will be considered. A decision to suspend the special season or to enact restrictions during the regular season will be based on all available information related to population status, harvests, and habitat.

The 1992 breeding population index for blue-winged teal of 4.33 million

exceeds the level established in the above interim criteria. Therefore, the frameworks contained in this document provide for reinstatement of the 9-day special September teal season with a 4-teal bag limit. This season is offered to nonproduction States in the Mississippi and Central Flyways, which are listed in a later portion of this document. Shooting hours will begin at one-half hour before sunrise to allow States, that may wish, the opportunity to compare the impact of presunrise and postsunrise shooting on nontarget duck species.

With respect to future evaluations, the Service will continue to support efforts to estimate harvests south of the U.S. and will promote blue-winged teal banding as part of the mallard pre-season banding program in order to improve the ability to estimate survival and recovery rates. Recently completed harvest surveys and an appraisal of possible band-reporting rates south of the U.S. have helped allay fears of excessive harvests beyond U.S. borders. Moreover, band-recovery data suggest that a greater proportion of the harvest south of the U.S. is comprised of adult males when compared to harvests in the U.S. and Canada. Finally, the Service strongly urges the Flyway Councils to document changes in wintering-habitat-management practices that may result from reinstatement of the September teal season.

#### iv. Experimental September Teal/Wood Duck Seasons

**Council Recommendations:** The Atlantic Flyway Council recommended that Florida be allowed to hold a September teal season (in conjunction with their experimental September wood duck season) when and if September teal seasons are restored in the Central and Mississippi Flyways.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that if the full September teal season is reinstated, teal be incorporated into the daily bag limit in Kentucky's and Tennessee's September wood duck season and that the bag limit be 4 birds, including no more than 2 wood ducks. If an abbreviated September teal season is offered, the Committee recommended a daily bag limit of 2 teal or wood ducks, singly or in the aggregate.

**Public Hearing Comments:** Ms. Susan Hagood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species. She also opposed special seasons in an effort to further reduce hunter participation.

**Written Comments:** The Humane Society of the United States requested that all special seasons be discontinued.

**Service Response:** Due to the increase in the breeding population index of blue-winged teal and the subsequent reinstatement of the September teal seasons in 1992, the Service will allow the harvest of teal in the former experimental September wood duck seasons. These seasons are now experimental September teal/wood duck seasons. The frameworks contained in this document allow shooting hours in Florida, Kentucky, and Tennessee to begin at one-half hour before sunrise and extend until sunset during the 1992 seasons. This will allow Kentucky and Tennessee the opportunity to compare the impacts of presunrise and postsunrise shooting on nontarget duck species.

### 3. Sea Ducks

**Public Hearing Comments:** Ms. Susan Hagood, representing the Humane Society of the United States, opposed the liberal limits on sea ducks.

**Written Comments:** A local organization from Massachusetts requested continuation of the special sea duck season in the Atlantic Flyway with no change in frameworks. The Humane Society of the United States expressed opposition to the sea duck season in the Atlantic Flyway.

**Service Response:** The Service continues to be concerned about the potential increase in harvest pressure on these species. Additional data are needed to assist management efforts for these species and a management plan is needed to guide future management efforts. The Service asks that the Flyway Councils make substantial progress to address these concerns prior to the regulations cycle for the 1993-94 seasons. Without more complete information on population status and harvest, the Service may be forced to restrict this season.

### 4. Canada Geese

#### A. Special Seasons

**Council Recommendations:** The Atlantic Flyway Council recommended that new experimental seasons for resident Canada geese be initiated in 1992 in Erie, Cattaraugus, and Chautauque Counties of New York and Bucks, Lehigh, Montgomery, Crawford, Erie, Butler, and Mercer Counties of Pennsylvania.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and



special seasons for impacts on the Southern James Bay Population of Canada geese. They further recommended that the Service fully analyze data from existing seasons before expanding seasons that might cause cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service approve operational status of the seasons in the Upper-Peninsula and Northern-Lower-Peninsula portions of Michigan which were part of the original 1986-89 experimental season and that the Service approve a 3-year expanded experiment in the eastern Upper Peninsula.

The Committee further recommended that the experimental seasons in the Fergus Falls/Alexandria and Southwest Border goose zones in Minnesota be extended pending completion of the final reports. Preliminary final reports indicate that these seasons meet the criteria outlined in the Memorandum of Agreement between Minnesota and the Service; however, Minnesota is unable to complete the final reports until 1991 band-recovery and parts-collection-survey data are obtained. The final reports will be completed prior to the March 1993 Council meeting.

The Committee also recommended that the Service establish a 3-year experimental special season in Boone, Callaway, Cole, and Howard Counties of central Missouri. They recommended that the season be 9-15 days long and be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate.

The Pacific Flyway Council recommended no change for the Oregon-Washington season except that the hunt area in Oregon be enlarged to include Youngs Bay, its tributaries south and east of the city of Astoria, and adjacent agricultural lands. Also, the Council recommended no change for September Canada goose hunting seasons in Utah and Wyoming.

**Public Hearing Comments:** Ms. Susan Hagood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species and opposed special seasons in an effort to further reduce hunter participation.

**Written Comments:** The Michigan Department of Natural Resources supported the recommendation by the Upper-Region Regulations Committee of

the Mississippi Flyway Council. Michigan indicated that they meet or are very close to the criteria established by the Service for the proportion of migrants in the harvest. They further indicated that they intend to obtain larger sample sizes and intensively monitor the harvest for all special goose seasons.

The Illinois Department of Conservation suggested that existing regulations do not fairly or adequately address the issue of impacts of early Canada goose seasons on nontarget populations exceeding standard population objectives.

The Wisconsin Department of Natural Resources supported the proposed regulations for their State. However, they remain concerned about the special season criteria and believe that some modifications are appropriate.

The Minnesota Department of Natural Resources requested that the Service provide assistance to States experiencing increasing problems with breeding Canada goose flocks. They noted that the Service obtains harvest and hunter-activity information for September teal seasons, yet States are required to obtain this information for seasons designed to control nuisance Canada geese.

The Oregon Department of Fish and Wildlife supported the expansion of the experimental September Canada goose season along the lower Columbia River to include Youngs Bay and adjacent upland areas.

The North American Wildlife Foundation suggested that States experiencing nuisance goose problems, such as Illinois, should not be required to meet criteria for nonmigrant composition of the harvest.

A local organization from Massachusetts requested continuation of the special seasons in that State.

**Service Response:** The frameworks contained herein provide for new experimental seasons in both New York and Pennsylvania and continuation of the season in Massachusetts.

In regard to the recommendation that the Service analyze data from existing seasons, the Service regularly monitors hunting seasons and analyzes data gathered during these seasons to assess impacts on all Canada goose populations. All special Canada goose seasons are required to meet the established criteria.

Data gathered to date during the experimental period for the existing special seasons in the above-referenced areas of Michigan are still not sufficient to permit an adequate evaluation of the seasons relative to the special-season criteria. The existing seasons in these

areas are being extended on an experimental basis to allow the State an opportunity to obtain the required sample sizes. Until an assessment can be made about whether the existing season in the southern portion of the Upper Peninsula meets the special-season criteria, the Service believes that the special season in the Upper Peninsula should not be expanded.

The Service concurs with the recommendations to extend the experimental seasons in the two Minnesota zones and to initiate a 3-year experimental special season in Missouri.

In regard to Oregon, the Service concurs with this expanded zone because the addition is small; and it is used by the same flock of geese now being hunted in this special season.

The Service proposed to revise the criteria in the June 19, 1992, *Federal Register* (at 57 FR 27674) and again in the July 10, 1992, *Federal Register* (at 57 FR 30887) and plans to finalize these modified criteria, after consideration of public comment, in the late-season final frameworks document scheduled for publication in late September. Because these criteria address both early and late special seasons, comments will be accepted until August 30, 1992.

## 9. Sandhill Cranes

**Council Recommendations:** The Central Flyway Council recommended no changes in the Mid-continent sandhill crane hunting frameworks. The management plan currently is being revised. The Council believes that frameworks should not be modified prior to the revision and that future frameworks should abide by the revised management plan.

The Central and Pacific Flyway Councils recommended that an experimental season be initiated in Montana for the Rocky Mountain Population of sandhill cranes. All hunts would follow guidelines as outlined in the revised *Pacific and Central Flyway Management Plan for Rocky Mountain Greater Sandhill Cranes*.

**Public Hearing Comments:** Mr. Wayne Pacelle, representing the Fund for Animals, expressed the opinion that the shooting of cranes was unethical.

**Service Response:** These frameworks provide for initiation of a season in Montana consistent with the revised management plan.

## 12. Rails

**Written Comments:** The Wisconsin Department of Natural Resources supported the proposed framework dates, season lengths, and bag limits.



*Service Response:* The Service appreciates the support for the frameworks contained in this document.

### 13. Snipe

*Written Comments:* The Wisconsin Department of Natural Resources supported the proposed framework dates, season lengths, and bag limits.

*Service Response:* The Service appreciates the support for the frameworks contained in this document.

### 14. Woodcock

*Written Comments:* The Wisconsin Department of Natural Resources supported the proposed framework dates, season lengths, and bag limits.

The Humane Society of the United States requested that woodcock seasons in the Eastern Region be closed or reduced.

*Service Response:* The Service appreciates the support for the frameworks contained in this document. Significant regulatory restrictions were enacted in the Eastern Region in 1985. Available evidence suggests that woodcock populations may be stabilizing in both regions. The Service does not believe that further restrictions are warranted at this time.

### 15. Band-tailed Pigeons

*Council Recommendations:* The Pacific Flyway Council recommended no change in frameworks for either the Coastal (Pacific Coast) Population or the Interior (Four-Corners) Population of band-tailed pigeons. They further indicated that formulation of a Interior Population management plan and revision of the Coastal Population plan will provide accessible background information, and provide a format for collection of population-status information in the future.

*Public Hearing Comments:* Ms. Susan Hagood, representing the Humane Society of the United States, and Mr. Wayne Pacelle, representing the Fund for Animals, both supported the hunting-season closure on the Coastal Population of band-tailed pigeons, but Mr. Pacelle also opposed the hunting season on the Interior Population, citing lack of population-status and harvest data.

*Written Comments:* The California Department of Fish and Game requested that the season for the Coastal Population of band-tailed pigeons remain open. They suggested that the Service consider alternatives short of complete closure to maintain the information-gathering networks established to gain insight into the actual causes for the population decline in pigeons. These efforts include the

Migratory Bird Harvest Information Program; reproductive and disease information from hunter-killed birds; and band-recovery information from marked samples. They indicated that, because of restrictive regulations, the breeding-population information for the past 6 years does not reflect the long-term downward trend, and that hunting is not limiting pigeon populations.

The Oregon Department of Fish and Wildlife urged the Service to reverse the decision to close the hunting season for the Coastal Population of band-tailed pigeons. Based on surveys conducted in Oregon, populations have stabilized since the 1970's and the counts in 1991 showed a 23 percent increase over 1990. The harvest survey, based on a mandatory hunter-permit program initiated in 1990, estimated a harvest of 2,200 pigeons that year. It is believed that a harvest of that magnitude would not adversely impact the resource. Recent activities by the Pacific Flyway Council have put increased emphasis on band-tailed pigeon management. Analysis of past banding data, collection of wings from harvested birds to obtain recruitment data, development of disease bulletins, and initiation of a research study by Oregon State University to learn more about the species, are some of the activities undertaken in the past year. Considering this emphasis, the season closure is deemed to be premature. If a total closure is warranted, it should be fully discussed by the Pacific Flyway Study Committee before such action is taken.

The Colorado Department of Natural Resources suggested that the Service did not provide sufficient notice of its intent to require a permit for some States to be able to implement such a requirement this year. They indicated that they currently obtain information from statewide harvest surveys. They stated that they plan to cooperate in the development of a management plan for the Interior Population and that they will participate in a cooperative management effort, including a permit requirement, beginning in 1993.

The Humane Society of the United States supported the Service's decision to close the season on the Coastal Population of band-tailed pigeons and urged the Service to also close the season on the Interior Population.

An individual in Washington requested that the Service close the hunting season for band-tailed pigeons in Washington, Oregon, and California. He further indicated that widespread habitat alteration and use of biocides have adversely affected pigeon populations and that biological

information necessary to evaluate status of the population is not available.

*Service Response:* The Service recognizes that the database used to manage band-tailed pigeon populations needs to be expanded and improved. Nevertheless, available information indicates that the Coastal Population has been declining since 1972, and apparently at an increased rate since 1985. The series of regulation restrictions, first initiated in 1975, have not been completely effective in reversing the population decline. In the July 15, 1991, *Federal Register* (56 FR 32264), the Service stated that it continued to be concerned about the decline of the Coastal Population of band-tailed pigeons and encouraged cooperative investigations into factors causing the decline. The Service believes that immediate further reduction in harvest is appropriate at this time. The Coastal Population band-tailed pigeon season will be reduced to 9 days with a daily bag limit of 2 birds. In addition, the Service recognizes the need for better information; in 1992, California, Washington, Oregon, and Nevada must either issue mandatory permits to band-tailed pigeon hunters to provide a framework which can be used to obtain harvest estimates or the States will obtain similar information through State surveys. These States will be required to acquire and report harvest and hunter-participation information to the Service by June 1 of the following year.

With this decision, the Service does not wish to imply that hunting necessarily caused the decline. However, the low reproductive potential of this species is such that any form of mortality is difficult to counterbalance when populations are at low levels.

There is little evidence that the Interior Population of band-tailed pigeons is experiencing a decline similar to that of the Coastal Population. A closure of the bandtail season in Utah, Colorado, Arizona, and New Mexico is not considered necessary at this time. Nevertheless, the Service recognizes the need for better information; in 1992, the four States will either issue mandatory permits to band-tailed pigeon hunters to provide a framework which can be used to obtain harvest estimates or the States will obtain similar information through State surveys. These States will be required to acquire and report harvest and hunter-participation information to the Service by June 1 of the following year.



## 16. Mourning Doves

**Council Recommendations:** The Central Flyway Council recommended that the portion of the South Zone in Texas from Del Rio to Fort Hancock be transferred to the Central Zone, and further that the same area be discontinued as part of the Special White-winged Dove Area. Transferring this area to the Central Zone would permit the hunting of both white-winged doves and mourning doves to begin in this area on September 1, rather than limiting the hunt prior to September 20 to weekends during the special season.

The Central Flyway Council recommendation regarding the number of white-winged doves allowed in the aggregate daily bag limit affects mourning doves as well. See item 17. **White-winged and White-tipped Doves.**

The Pacific Flyway Council recommended no change in frameworks. They remarked that significant restrictions in mourning dove frameworks were implemented in 1987. Since that time, the Western Management Unit call-count index has shown a modest increase.

**Written Comments:** The Georgia Department of Natural Resources requested a modification to the boundary separating the mourning dove zones.

The Humane Society of the United States requested that the mourning dove seasons in the Western Management Unit be closed or, at a minimum, bag limits and season lengths should be substantially reduced due to the long-term decline in this population.

**Service Response:** These frameworks implement the requested zone changes in Texas and Georgia. In response to declining populations, restrictive hunting regulations were implemented by the Service in 1987 in the Western Management Unit. Since that time, there has been a significant increasing trend in the population. The Service does not believe that further restrictions are warranted at this time. However, the Service will continue to closely monitor this population and recommends that affected States contribute to ongoing and planned studies designed to address factors causing the lowered population status.

## 17. White-winged and White-tipped Doves

**Council Recommendations:** The Central Flyway Council recommended that the special white-winged dove season be increased from 2 days to 4 days in September if the Lower Rio Grande Valley whitewing population

increased in 1992 to over 350,000 breeding birds.

The Council further recommended that the number of white-winged doves permitted in the 12-dove aggregate daily bag limit during the Texas mourning dove season in Cameron, Hidalgo, Starr, and Willacy Counties in the Lower Rio Grande Valley be increased from 2 to 6 to match the statewide daily bag limit.

Finally, the Central Flyway Council recommendation regarding realignment of zone boundaries affects white-winged doves. See item 16. **Mourning Doves.**

The Pacific Flyway Council recommended no change in frameworks. They noted that since the implementation of restrictive regulations in 1987, white-winged dove populations appear to be stable or slightly increasing in areas where data are collected.

**Service Response:** These frameworks provide for a 4-day special season in Texas. However, the Service believes that whitewing populations have not sufficiently recovered from the freeze during the winter of 1989 and from several years of drought to warrant allowing the number of whitewings permitted in the aggregate bag limit to increase from 2 to 6 in Cameron, Hidalgo, Starr, and Willacy Counties.

## 18. Alaska

**Council Recommendations:** The Pacific Flyway Council recommended no change in frameworks for Alaska, including continuation of the tundra swan season.

**Public Hearing Comments:** Ms. Susan Hagood, representing the Humane Society of the United States, stated that the proposed opening framework date for Alaska was too early, allowing young birds to be taken, and requested that the opening be delayed by 2 weeks. Mr. Wayne Pacelle, representing the Fund for Animals, echoed the view of the Humane Society of the United States that seasons in Alaska opened too early and were too long.

**Written Comments:** The Humane Society of the United States requested that opening dates in Alaska be delayed by 2 weeks.

**Service Response:** Young birds have been and always will be a component of the harvest and delaying seasons in Alaska by 2 weeks will not reduce the component of young in the harvest. Phenologically, conditions in portions of Alaska, especially at higher altitudes and latitudes, are such that by mid-September in some years, ice has formed and most migratory birds are in migration. In such places, young birds have either matured sufficiently to migrate or they perish. There is no biological merit in delaying seasons in

Alaska until mid-September. While most of Alaska's seasons are as long as permitted by treaty and limits are generally more liberal than elsewhere, migratory bird hunters in Alaska spend fewer days afield and bag fewer birds than their counterparts in the conterminous States. In general, climatic conditions and opportunity are more important in Alaska in governing the magnitude of harvest than is season length.

## 21. Virgin Islands

The frameworks contained in this document do not provide for an open season on scaly-naped pigeons in the Virgin Islands during the 1992-93 season.

## 22. Falconry

**Written Comments:** The Minnesota Department of Natural Resources requested that the Service increase the number of segments allowed during the extended falconry seasons from 3 to 4 segments or offer another option that would allow States with 3-way-split regular seasons to select extended falconry dates in a manner so that, when viewed in conjunction with their regular-season days, the combined seasons will appear continuous.

The Wisconsin Department of Natural Resources suggested that the number of splits available during extended falconry seasons should be unlimited, because the taking of migratory game birds by falconry is insignificant. They further question the policy of selecting extended falconry dates separately from those occurring during the regular seasons.

**Service Response:** The Service recognizes the small magnitude of harvest by falconers and attempts to provide the maximum amount of opportunity possible. However, the Service believes that the provisions for extended falconry seasons allow sufficient flexibility for season selections. The frameworks contained herein provide for seasons up to 107 days in length (in combination with other seasons). The extended falconry seasons may be selected between September 1 and March 10 and may be split into a maximum of 3 segments. Allowing a greater number of split seasons would needlessly complicate the regulations. Extended-season dates are selected separately from those occurring in conjunction with the firearm seasons in an effort to avoid errors. This effort has been successful and will be continued.

Each extended falconry season may be divided into a maximum of three



segments. However, in an effort to accommodate attempts by States to publish simplified regulations, additional segments will be allowed when the combination of extended falconry seasons, regular firearm seasons, and special firearm seasons would span a single, continuous set of dates. States will be responsible for documenting that these seasons span a single, continuous set of dates and must indicate the number of days contained in each extended falconry segment, regular firearm segment, and special firearm segment to ensure that the total number of hunting days will not exceed 107 days. This documentation must be presented at the time States make their annual season selections.

#### NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with EPA on June 9, 1988. Notice of Availability was published in the *Federal Register* on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

#### Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

#### Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 *Federal Register*, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a

summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

#### Memorandum of Law

In the May 8 *Federal Register*, the Service stated that it planned to publish its Memorandum of Law for the 1992-93 migratory bird hunting regulations with its first final rulemaking.

**Memorandum of Law.** Section 4 of the Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided under section 3 of the Migratory Bird Treaty Act (Act) of July 3, 1918, as amended (16 U.S.C. 703-712). The Act authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped,

carried, exported, or transported. Such regulations for hunting have been promulgated annually since 1918. They appear in 50 CFR part 20, subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the Service's budget. Among these activities are biological surveys, hunter-activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1992-93, the Service has published three proposed rules for public comment and conducted two public hearings to facilitate public input into the rulemaking process. Four additional rulemakings are included in the remaining schedule for establishing the annual hunting regulations for 1992-93. Numerous public comments were summarized in *Federal Registers* listed in the preamble of this document. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. Comments in support of the Service's initial or supplementary regulatory proposals are noted. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent *Federal Register* documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1992-93 migratory bird hunting regulations which are adequately supported by the Service's records.

#### Authorship

The primary authors of this rule are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

#### Regulations Promulgation

The rulemaking process for migratory bird hunting regulations must, by its nature, operate under severe time



constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed early-season rulemaking was published on July 10, 1992, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that, at the close of the comment period, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 703-712), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State and Territory conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, for the 1992-93 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992-93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703-712), and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a-d and e-j).

Dated: July 31, 1992.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

#### Final Regulations Frameworks for 1992-93 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds.

#### General

**Dates:** All outside dates noted below are inclusive. **Shooting and Hawking (taking by falconry) Hours:** Unless otherwise specified, from one-half hour before sunrise to sunset daily.

**Possession Limits:** Unless otherwise specified, possession limits are twice the daily bag limit.

**Area and Zone Descriptions:** Geographic descriptions are contained in a later portion of this document.

#### Mourning Doves

**Outside Dates:** Between September 1, 1992, and January 15, 1993, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

*Eastern Management Unit (All States east of the Mississippi River, and Louisiana)*

#### Hunting Seasons and Daily Bag

**Limits:** Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

**Zoning and Split Seasons:** States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana, and Mississippi may commence no earlier than September 20, 1992. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

*Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)*

#### Hunting Seasons and Daily Bag

**Limits:** Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

**Zoning and Split Seasons:** States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1, 1992 and January 25, 1993; and for the South Zone between September 20, 1992, and January 25, 1993.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special white-winged dove season in the South Zone, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

2. In Cameron, Hidalgo, Starr, and Willacy Counties, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-winged doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

*Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)*

#### Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1-15, 1992, and November 1, 1992-January 15, 1993. In Arizona, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

#### White-Winged Doves

*Hunting Seasons and Daily Bag Limits:*



Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19, 1992. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

#### **Band-tailed Pigeons**

*Pacific Coast States:* California, Oregon, Washington, and Nevada.

*Outside Dates:* Between September 15, 1992, and January 1, 1993.

*Hunting Seasons and Daily Bag Limits:* Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

*Permit Requirement:* The appropriate State agency must issue permits or, at a minimum, obtain harvest and hunter-participation data, and report on harvest and hunter participation to the Service by June 1 of the following year.

*Areas:* These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

*Zoning:* California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7, 1992.

*Four-Corners States:* Arizona, Colorado, New Mexico, and Utah.

*Outside Dates:* Between September 1 and November 30, 1992.

*Hunting Seasons and Daily Bag Limits:* Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

*Permit Requirement:* The appropriate State agency must issue permits or, at a minimum, obtain harvest and hunter-participation data, and report on harvest and hunter participation to the Service by June 1 of the following year.

*Areas:* These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

*Zoning:* New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1, 1992.

#### **Rails**

*Outside Dates:* States included herein may select seasons between September 1, 1992, and January 20, 1993, on clapper, king, sora, and Virginia rails.

*Hunting Seasons:* The season may not exceed 70 days, and may be split into two segments.

#### **Clapper and King Rails**

##### *Daily Bag Limits:*

In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species.

In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

#### **Sora and Virginia Rails**

*Daily Bag and Possession Limits:* In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

#### **American Woodcock**

*Outside Dates:* States in the Atlantic Flyway may select hunting seasons between October 1, 1992, and January 31, 1993. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1992, and January 31, 1993.

#### **Hunting Seasons and Daily Bag Limits:**

In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

*Zoning:* New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

#### **Common Snipe**

*Outside Dates:* Between September 1, 1992, and February 28, 1993. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

#### **Common Moorhens and Purple Gallinules**

*Outside Dates:* Between September 1, 1992, and January 20, 1993, in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

#### **Sandhill Cranes**

##### *Regular Seasons in the Central Flyway:*

*Outside Dates:* Between September 1, 1992, and February 28, 1993.

*Hunting Seasons:* Seasons not to exceed 58 days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming.

Seasons not to exceed 93 days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

*Daily Bag Limits:* 3 sandhill cranes.

*Permits:* Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in his possession while hunting.



**Special Seasons in the Central and Pacific Flyways:**

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

**Outside dates:** Between September 1, 1992, and January 31, 1993.

**Hunting Seasons:** The season in any State or zone may not exceed 30 days.

**Bag limits:** Not to exceed 3 daily and not to exceed 9 per season.

**Permits:** Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

**Other provisions:** Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

**Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)**

**Outside Dates:** Between September 15, 1992, and January 20, 1993.

**Hunting Seasons and Daily Bag Limits:** Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed species.

**Daily Bag Limits During the Regular Duck Season:** Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may select, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species. In all other areas, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck-season daily bag and possession limits.

**Areas:** In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have

been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

**September Teal Season**

**Outside Dates:** Between September 1 and September 30, 1992, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

**Hunting Seasons and Daily Bag Limits:** Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

**Special September Teal/Wood Duck Seasons**

**Florida:** An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

**Tennessee and Kentucky:** In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

**Special Early Canada Goose Seasons****Atlantic Flyway**

**Hunting Seasons:** Experimental Canada goose seasons of up to 10 consecutive days may be selected by Massachusetts, New York, North Carolina, and Pennsylvania. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

**Outside dates:** Between September 1 and September 10, 1992.

**Daily bag limits:** Not to exceed 5 Canada geese.

**Mississippi Flyway**

**Hunting Seasons:** Canada goose seasons of up to 10 consecutive days may be selected by Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The seasons in the following States and portions of States are experimental: Indiana; Missouri; Ohio; Wisconsin; in Michigan, that portion of the Upper Peninsula previously open to the hunting of Canada geese in early September and that portion of the Lower Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties and all counties north thereof; in Minnesota, the Fergus Falls/Alexandria and Southwest Border Zones. Areas open to the hunting of Canada geese must be described,

delineated, and designated as such in each State's hunting regulations.

**Outside dates:** Between September 1 and September 10, 1992, except in Missouri, where the outside dates are October 1 to October 15, 1992.

**Daily bag limits:** Not to exceed 5 Canada geese.

**Pacific Flyway**

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.

2. Hunting will be by State permit.

3. No more than 150 permits, in total, may be issued.

4. Each permittee may take no more than 2 Canada geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. Not to exceed 4 days during September 1-15, 1992.

2. Hunting will be by State permit.

3. Not more than 200 permits may be issued.

4. Each permittee may take no more than 2 Canada geese per season.

Oregon and Washington may select an experimental season on Canada geese subject to the following conditions:

1. The seasons in Oregon and Washington must be concurrent.

2. Not to exceed 10 days during September 1-10, 1992.

3. Hunting will be by State permit.

4. Each permittee may take no more than 2 Canada geese per day.

**Alaska**

**Outside Dates:** Between September 1, 1992, and January 26, 1993.

**Hunting seasons:** Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

**Closures:** The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

**Daily Bag and Possession limits:**

**Ducks—** Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The



basic limits may include no more than 2 pintails daily and 6 in possession, and 2 canvasbacks daily and 6 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

**Geese**—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

**Brant**—A daily bag limit of 2.

**Common snipe**—A daily bag limit of 8.

**Sandhill cranes**—A daily bag limit of 3.

**Tundra swans**—In Game Management Unit 22, an open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

2. The season must be concurrent with other migratory bird seasons.

3. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

#### Hawaii

**Outside Dates:** Between September 1, 1992, and January 15, 1993.

**Hunting Seasons:** Not more than 60 days (70 under the alternative) for mourning doves.

**Bag Limits:** Not to exceed 15 (12 under the alternative) mourning doves.

**Note:** Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

#### Puerto Rico

##### Doves and Pigeons:

**Outside Dates:** Between September 1, 1992, and January 15, 1993.

**Hunting Seasons:** Not more than 60 days.

**Daily Bag and Possession Limits:** Not to exceed 10 Zenaida, mourning, and white-winged doves and scaly-naped pigeons in the aggregate, no more than 5 of which may be scaly-naped pigeons.

**Closed Areas:** There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

**Ducks, Coots, Moorhens, Gallinules, and Snipe:**

**Outside Dates:** Between October 1, 1992, and January 31, 1993.

**Hunting Seasons:** Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

##### Daily Bag Limits:

**Ducks**—Not to exceed 3.

**Common moorhens**—Not to exceed 6.

**Common snipe**—Not to exceed 6.

**Closures:** The season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule (*Porphyrio martinica*), common coot (*Fulica americana*), and Caribbean coot (*Fulica caribaea*).

**Closed Areas:** There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

#### Virgin Islands

##### Doves and Pigeons:

**Outside Dates:** Between September 1, 1992, and January 15, 1993.

**Hunting Seasons:** Not more than 60 days for Zenaida doves.

**Daily Bag and Possession Limits:** Not to exceed 10 Zenaida doves.

**Closed Seasons:** No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

**Closed Areas:** There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

##### Local Names for Certain birds:

Zenaida dove (*Zenaida aurita*) -- mountain dove; Bridled quail dove (*Geotrygon mystacea*) -- Barbary dove, partridge; Common Ground dove (*Columba passerina*) -- stone dove, tobacco dove, rola, tortolita; Scaly-naped pigeon (*Columba squamosa*) -- red-necked pigeon, scaled pigeon.

##### Ducks:

**Outside Dates:** Between December 1, 1992, and January 31, 1993.

**Hunting Seasons:** Not more than 55 consecutive days may be selected for hunting ducks.

**Daily Bag Limits:** Not to exceed 3 ducks.

**Closures:** The season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); and the masked duck (*Oxyura dominica*).

#### Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR part 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following: Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

**Framework Dates:** Seasons must fall between September 1, 1992 and March 10, 1993.

**Daily Bag and Possession Limits:** Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

**Regular Seasons:** General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR part 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

#### Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

#### Mourning and White-winged Doves:

##### Alabama

**South Zone:** Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston, and Henry Counties.

**North Zone:** Remainder of the State.

##### California:

**White-winged Dove Open Areas:** Imperial, Riverside, and San Bernardino Counties.

##### Georgia

**Zone 1:** That portion of the State lying north of US Highway 280 or east of US Interstate 75.



**Zone 2:** That portion of the State lying south of US Highway 280 and west of US Interstate 75.

**Louisiana**

**North Zone:** That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

**South Zone:** The remainder of the State.

**Mississippi**

**North Zone:** That portion of the State lying north of U.S. Highway 84.

**South Zone:** The remainder of the State.

**Nevada**

**White-winged Dove Open Areas:** Clark and Nye Counties.

**Texas**

**North Zone:** That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

**South Zone:** That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

**Special White-winged Dove Area in the South Zone:** That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to Uvalde; south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southwest along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

**Area with additional restrictions:** Cameron, Hidalgo, Starr, and Willacy Counties.

**Central:** That portion of the State lying between the North and South Zones.

**Band-tailed Pigeons:**

**California**

**North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino,**

**Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.**

**South Zone—The remainder of the State.**

**New Mexico**

**North Zone—North of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 from Socorro to the Texas State line.**

**South Zone—Remainder of the State.**

**Washington**

**Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.**

**Woodcock:**

**New Jersey**

**North Zone:** That portion of the State north of State Highway 70.

**South Zone:** The remainder of the State.

**Special September Goose Seasons:**

**Massachusetts**

**Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.**

**New York**

**St. Lawrence Area—All or portions of St. Lawrence County; see State hunting regulations for area descriptions.**

**Erie Area—Counties of Erie, Cattaraugus, and Chautauqua.**

**North Carolina**

**Early-season Canada Goose Area—That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.**

**Pennsylvania**

**Northwestern Early-Season Goose Area—Counties of Butler, Crawford, Erie, and Mercer.**

**Southeastern Early-Season Goose Area—Counties of Bucks, Lehigh, and Montgomery.**

**Indiana**

**Early-season Canada Goose Area—Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.**

**Michigan**

**Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.**

**Upper Peninsula—That area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east**

**along U.S. Highway 2 to Interstate Highway 75, north along Interstate 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.**

**Minnesota**

**Twin Cities Metropolitan Zone—All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.**

**Fergus Falls/Alexandria Zone—All or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.**

**Southwest Border Zone—All or portions of Martin and Jackson Counties.**

**Missouri**

**Central Missouri Zone: All or portions of Boone, Callaway, Cole, and Howard Counties.**

**Ohio**

**Early-season Canada Goose Area—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.**

**Wisconsin**

**Early Goose Hunt Subzone—That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.**

**Oregon**

**Early-season Canada Goose Area—Those portions of Multnomah, Columbia, and Clatsop Counties (excluding Sauvie Island Wildlife Area) within the following boundary: Beginning at Portland, Oregon, at the south end of the Interstate 5 bridge; south on I-5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.**

**Utah**

**Early-season Canada Goose Area—Cache County**

**Washington**

**Early-season Canada Goose Area—Starting in Vancouver at the Interstate Highway 5 bridge north on I-5 to Kelso, west on State Highway 4 from Kelso to State Highway 401, south and west on**



State Highway 401 to the Astoria-Megier bridge, from the Astoria-Megier bridge along the Washington-Oregon State line to the point of beginning.

#### Wyoming

**Bear River Area**—That portion of Lincoln County described in State regulations.

**Salt River Area**—That portion of Lincoln County described in State regulations.

**Eden-Farson Area**—Those portions of Sweetwater and Sublette Counties described in State regulations.

#### Sandhill Cranes:

##### Central Flyway

##### Colorado

**Regular-Season Open Area**—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide) and North Park (Jackson County).

##### New Mexico

**Regular-Season Open Area**—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

**Middle Rio Grande Valley Hunt Area**—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

**Hatch-DeMing Zone**—Sierra, Luna, and Dona Ana Counties.

##### Oklahoma

**Regular-Season Open Area**—That portion of the State west of I-35.

##### Texas

**Regular-Season Open Area**—That portion of the State west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary.

##### North Dakota

**Regular-Season Open Area**—That portion of the State west of U.S. Highway 281.

#### South Dakota

**Regular-Season Open Area**—Statewide.

#### Montana

**Regular-Season Open Area**—The Central Flyway portion of the State except that area south of I-90 and west of the Bighorn River.

#### Wyoming

**Regular-Season Open Area**—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

**Riverton-Boysen Unit**—Portions of Fremont County.

#### Pacific Flyway

##### Arizona

**Special-Season Area**—Game Management Units 30A, 30B, 31, and 32.

##### Montana

**Special-Season Area**—See State Regulations.

##### Utah

**Special-Season Area**—Cache and Rich Counties.

#### Wyoming

**Bear River Area**—That portion of Lincoln County described in State regulations.

**Salt River Area**—That portion of Lincoln County described in State regulations.

**Eden-Farson Area**—Those portions of Sweetwater and Sublette Counties described in State regulations.

#### All Migratory Game Birds in Alaska:

**North Zone:** State Game Management Units 11-13 and 17-26.

**Gulf Coast Zone:** State Game Management Units 5-7, 9, 14-16, and 10—Unimak Island only.

**Southeast Zone:** State Game Management Units 1-4.

**Pribilof and Aleutian Islands Zone:** State Game Management Unit 10—except Unimak Island.

**Kodiak Zone:** State Game Management Unit 8.

#### All Migratory Birds in the Virgin Islands

**Ruth Cay Closure Area**—The island of Ruth Cay, just south of St. Croix.

#### All Migratory Birds in Puerto Rico

**Municipality of Culebra Closure Area**—All of the Municipality of Culebra.

**Desecheo Island Closure Area**—All of Desecheo Island.

**Mona Island Closure Area**—All of Mona Island.

**El Verde Closure Area**—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

**Cidra Municipality and adjacent areas**—All of Cidra municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra municipality boundary to the point of beginning.

[FR Doc. 92-20168 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-55-F



**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-AA24

**Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1992-93 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

**DATES:** The comment period for proposed late-season frameworks will end on August 31, 1992.

**ADDRESSES:** Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:****Regulations Schedule for 1992**

On May 8, 1992, the Service published for public comment in the *Federal Register* (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

As announced in the May 8 and June 19 *Federal Registers*, a public hearing was held in Washington, DC, on June 25, 1992, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service

published in the *Federal Register* (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992-93 season.

On August 6, 1992, a public hearing was held in Washington, DC, as announced in the *Federal Registers* of May 8 (57 FR 19865), June 19 (57 FR 27672), and July 10 (57 FR 30884), 1992, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. The Service later published a fourth document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992-93.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for the 1992-93 late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1992-93 season. All pertinent comments on the May 8 proposals received through August 6, 1992, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the *Federal Register* on or about September 20, 1992.

**Special Assessment: Use of Framework Dates as a Regulatory Tool**

Since 1947, framework dates (i.e., the earliest opening and latest closing dates that a State may select for duck hunting) have been part of the Federal annual regulations set for each flyway and they have been used in concert with season length, bag limits, and other regulations to manage the harvests of ducks. In 1990, the Central and Mississippi Flyway Councils recommended that the Service forego annual adjustments of framework dates for purposes of managing duck harvest. Based on these recommendations, the Service elected to review the role of framework dates as a management tool.

The Service recently completed a report on duck hunting framework dates that has been reviewed by the Flyway Councils. The independent effects of framework-date changes on the harvest

rates of ducks were impossible to isolate due to the confounding effects of changes in season length, bag limits, and other regulations. However, circumstantial evidence suggested that framework opening dates could be manipulated to affect the age, sex, and species composition of the harvest and that closing dates could be used to affect the age composition of the harvest. Adjustments to framework opening dates also could be used to manage the proportion of local and migrant ducks harvested. Therefore, the Service believes that the ability to manipulate framework dates annually is potentially useful for managing duck harvests.

**Council Recommendations:** In March, the Atlantic Flyway Council noted that framework opening dates may be useful for managing harvests of certain duck populations in the Atlantic Flyway. Under normal circumstances, the opening date in the Atlantic Flyway should be October 1. Framework closing dates should not be used as a tool for managing duck harvest and should be fixed indefinitely at no earlier than January 15 for the Atlantic Flyway.

In August, the Atlantic Flyway Council stated that they were opposed to the use of framework dates to regulate total duck harvest. They also believed that restrictions on framework dates that have been used in the Atlantic Flyway since 1988 may have benefited some eastern populations of waterfowl, but the need to further protect these populations has not been documented. They also noted that liberalizing framework dates while holding other regulations stable could increase our understanding of the effects of opening and closing dates.

In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates be fixed dates not subject to annual fluctuations and that these dates should be the Saturday nearest October 1 through January 20. They reaffirmed this position during their July meeting.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service not use framework dates to adjust harvest, but if framework dates are used, the Service should develop a well-designed study to clarify the various impacts of framework dates. The Committee had previously recommended that framework dates should be the Saturday nearest to October 1 and the Sunday nearest to January 20. They stated that impacts of framework-date manipulations cannot



be separated from other past regulatory changes and that the current framework application may not provide regulatory fairness throughout their flyway.

In March, the Central Flyway Council noted that the Service's review of framework dates has failed to provide evidence of measurable benefits from past use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on northern and southern States. The Council believes that harvest management should focus on more equitable regulations, such as season length and daily bag limits. Framework dates should not be used to regulate annual harvests, but should be used to establish an appropriate biological framework for duck hunting.

In August, the Central Flyway Council stated that season length and bag limits should be the principal means of adjusting harvest and that framework dates should be used only under extraordinary circumstances. They disagreed with using fixed calendar dates for opening and closing duck seasons and recommend framework dates identical to those used during 1980-84. They also believe that framework dates need not necessarily be the same in all flyways and that opening and closing dates can be manipulated independently.

In March, the Pacific Flyway Council recommended that manipulation of framework dates should continue to be an option for regulating duck harvest. The Service should not eliminate any duck-harvest-management options, although the evaluation conducted by the Service to assess the impact of utilizing framework dates to regulate harvest was inconclusive.

In August, the Pacific Flyway Council recommended using the first Saturday in October through the second Sunday in January during periods of restrictive regulations. In periods of more liberal regulations, they recommended using the Saturday nearest October 1 through the Sunday nearest January 20. They preferred floating rather than fixed framework dates. They supported further evaluations of the effectiveness of framework dates as a regulatory tool.

**Written Comments:** The States of Arkansas, Colorado, Florida, Minnesota, Mississippi, North Carolina, North Dakota, South Dakota, and Texas opposed the use of framework dates as a tool to regulate total duck harvest. Colorado, Minnesota, Mississippi, North Carolina, North Dakota, and South Dakota believed that management of harvest rates of ducks should be accomplished principally by

adjustments in season length and bag limits. South Dakota believed that framework dates should be standardized, while Arkansas, Florida, Massachusetts, and North Carolina believed that dates should generally be standardized, except that they may be manipulated to meet specific objectives or when populations are critically low. Florida, Maryland, and North Carolina believed that opening and closing dates should be treated as independent regulatory tools. Florida and Mississippi desired fixed calendar opening dates; while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota desired floating opening-dates. Fixed calendar closing-dates were preferred by Arkansas, Florida, Minnesota, and Mississippi, while floating closing-dates were preferred by Colorado.

Massachusetts, Mississippi, and North Carolina preferred that the framework open on October 1, while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota preferred the Saturday nearest October 1. Massachusetts and Florida preferred that the framework close on January 15; North Carolina desired a closing date no earlier than January 15; Colorado preferred that the framework close on the Sunday nearest January 20; and Arkansas, Minnesota, Mississippi, the Mississippi Legislature, a U.S. Senator from Mississippi, a U.S. Congressman from Mississippi, and a Mississippi State Senator preferred that the framework close on January 20.

Texas, Minnesota, North Dakota, and Colorado noted that using framework dates to manage harvest can be unfair to northern and southern States. Colorado believed that framework dates can be a useful tool for managing the species composition of the harvest. Colorado and Maryland thought that delays in opening dates can result in greater harvest on certain species because of the loss of a buffering effect from early-migrating species. Massachusetts and Minnesota believed that delayed opening-dates can reduce the harvest of some local populations of ducks, while Nebraska questioned this interpretation. Florida, Massachusetts, Maryland, and Nebraska thought that framework-date adjustments may geographically displace, but not reduce harvest.

**Proposed Service Policy:** The Service will retain the option of using framework dates as a regulatory tool. Guidelines for the use of framework dates will be developed in cooperation with all flyways and other interested parties. Consideration will be given to: (1) the relative importance of framework dates, bag limits, season lengths, and other regulations for managing duck harvests; (2) the advantages and

disadvantages of using fixed-calendar versus floating dates; (3) allowing inter-flyway differences in framework dates for meeting specific harvest objectives; and (4) independently manipulating opening and closing dates to achieve specific harvest objectives.

**Rationale:** In the past, framework dates, bag limits, and season lengths have been adjusted concurrently, and these "packages" of regulations have been effective in managing the total harvest of ducks. Since framework dates have not been adjusted independently, their contribution to the effectiveness of a regulatory package is unknown. However, the degree to which the exclusion of framework dates would reduce the effectiveness of regulations in controlling duck harvests likewise is unknown. Thus, the Service believes that framework dates should continue as one of several regulations considered annually in managing duck harvests.

#### **Presentations at Public Hearing**

Service employees presented reports on the status of waterfowl. These reports are briefly reviewed as a matter of public information. The first three presentations are summaries of information contained in the "Status of Waterfowl and Fall Flight Forecast" report. The last presentation is a regulatory perspective of waterfowl harvests.

Dr. Robert Trost reported on geese and swans. The status of geese and swans was summarized by several different methods. Satellite imagery suggested that snow cover was more persistent and extensive this year than last year throughout most arctic and subarctic regions of Canada. Intensive surveys suggested that nesting phenology was from 1 to 3 weeks later than last year throughout most of the major breeding areas. For goose populations in Alaska and the western Canadian Arctic, nesting was delayed about 7 to 10 days, resulting in lower production than last year. However, most nesting areas in this region became snow-free in time for successful nesting to take place. In the eastern Canadian Arctic, to the north and east of a line running roughly from Cambridge Bay south and east to the Ungava Peninsula and including Southampton Island, nesting was delayed up to 3 weeks. Most goose populations nesting in this region likely had severely-reduced or no production this year. Nesting conditions in the lowlands surrounding Hudson Bay were similar to the western Canadian Arctic with reduced production forecast for all goose populations in this area. An exception was the most southerly



nesting population, the Southern James Bay Population of Canada geese, which experienced fair production this year for the first time in the past several years. Most geese nesting at more southerly latitudes will experience average to good production this year. Most goose populations remain at or above population objectives and the poor production forecast for this year is not expected to seriously threaten the long-term status of any population. The Atlantic Population of Canada geese has experienced a long-term decline and this year's mid-winter index was the lowest index during the last 23 years. The status of this population is a matter of serious concern. The eastern and western tundra swan populations likely experienced average or below-average production this year, and no change in their population status is expected.

Dr. David Caithamer reported on habitat conditions and the status of duck populations as of May 1992. Dry conditions existed across the central and western portions of the prairie-pothole region and much of the western U.S. Upland nesting conditions were variable and may have limited nesting efforts in many regions. The total number of May ponds in Prairie Canada and the northcentral U.S. increased 13 percent from 1991, but remained 21 percent below the 1974-91 average. In the Arctic, northern and eastern Canada, and the northeastern U.S., spring weather conditions were delayed 1-2 weeks this year. Water levels were generally near normal across these areas, but some flooding was reported on interior river flats in Alaska and the Northwest Territories.

In 1992, the estimated breeding population of all ducks, excluding scoters, eiders, oldsquaws, and mergansers, was 29.4 million, an increase of 11 percent from the 1991 estimate of 26.6 million. Total duck numbers were at the highest level observed since 1986, but remained 8 percent below the long-term average. Total duck populations increased significantly in Saskatchewan, Manitoba, and Western Ontario, while they decreased in Alaska. The distribution of ducks within the surveyed area was similar to recent years, with about 50 percent found in Prairie Canada and the northcentral U.S. Of the 10 major species monitored each spring, only mallard, gadwall, and redhead exhibited a significant change in populations size from last year. The mallard population was 6.0 million, up 10 percent from that in 1991 and the highest estimate since 1988; however, mallard numbers remain 17 percent

below the long-term average. Most of the improvements in the mallard population occurred in southern Saskatchewan, southern Manitoba, and Minnesota. Increases in these areas were probably related to increased pond numbers. The breeding population estimate for gadwall increased 28 percent to a record high of 2.0 million; this is 57 percent above its long-term average. Redhead numbers increased 34 percent this year to 596,000 and approximated their long-term average. Breeding populations of some prairie-nesting species continue to be depressed due to limitations in nesting cover, high predator populations, and extended drought in some regions, all of which have acted in concert to limit recruitment.

Dr. James Dubovsky reported that throughout much of the survey area, favorable weather during the first 2 weeks of June generally resulted in stable or improved habitat conditions. Moderate to heavy amounts of rain were recorded across the northcentral U.S. and Prairie Canada. The number of July ponds decreased 50 percent and 23 percent from 1991 in Prairie Canada and the northcentral U.S., respectively, and were 20 percent and 12 percent below their respective long-term averages. The brood index for the grasslands of Alberta was the lowest recorded, and several areas in westcentral Saskatchewan had the lowest water levels observed in the last 3 decades. In contrast, southern Manitoba and some areas in the eastern Dakotas had good to excellent brood-rearing cover. Production from western areas of the surveyed region was expected to be poor, whereas production in eastern areas should have been average to good. Overall, brood indices for Prairie Canada and the northcentral U.S. were 51 percent and 57 percent below long-term averages, respectively. Production of pintails was likely poor, and this will not help re-build that population to former levels. The mallard fall-flight index should be about 9 million birds, up 20 percent from 1991. The total duck fall flight was estimated at approximately 62 million birds, and is unchanged from last year. Fall flights for the Pacific, Central, and Mississippi Flyways should be similar to last year. The Atlantic Flyway fall flight was predicted to be slightly larger than in 1991.

Mr. Fred Johnson stated that since 1984, hunting regulations for ducks in the United States have been made increasingly restrictive in response to declining breeding populations. During the 1991-92 hunting season, regulations remained very restrictive.

In 1991, the number of waterfowl hunters and days spent afield were similar to the 1990 hunting season. Hunter success and total harvest of ducks also were unchanged. All of these statistics remain at levels substantially below the 1980-84 period when regulations were more liberal. The harvests of individual species during the 1991 hunting season also were very similar to 1990, but are approximately half of those observed during 1980-84.

Banding data suggest that harvest rates of mid-continent mallards have declined with increasingly restrictive regulations. The proportion of the adult fall population currently being harvested is well below 10 percent. Mallards tend to have the highest harvest rates of any duck species, suggesting that current harvest rates of all ducks are very low.

Harvest is believed to play a greater role in the dynamics of goose populations than is the case for most ducks. Because geese breed later and produce fewer young, goose populations are less able to support high harvest pressure. The harvest of Canada geese declined slightly last year, but remained near the record high, reflecting the generally good status of this species. Snow goose harvests have changed little in recent years, despite the fact that populations are at or near record-high levels. The harvest of white-fronted geese has also remained relatively stable over time. Brant harvests were similar to the 1990-91 season and are small compared to those of other geese.

#### Review of Comments Received at Public Hearing

Fourteen individuals presented statements at the August 6, 1992, public hearing. These comments are summarized below.

Mr. Paul Accomando, representing a Massachusetts sportsmen's organization, asked the Service to consider giving compensatory days to those States of the Atlantic Flyway which prohibit Sunday hunting. He claimed that the Service has not responded well to this request in the past.

Mr. Lloyd H. Piasse, Jr., representing several local Massachusetts sportsmen's organizations, requested a 50-day, 4-bird brant season; a 70-day, 3-bird goose season; a 107-day sea duck season; a 35-day duck season; and compensatory days for those lost because of the prohibition in Massachusetts against hunting on Sundays.

Ms. Susan Hagood, representing The Humane Society of the United States, was opposed to duck hunting and called for more opportunities for the non-



hunting public to be involved in the regulatory process. She supported a closed season on pintails and on all other ducks in areas where pintails were present and thus could be incidentally taken. She admonished the Service for not collecting data on the status of ruddy ducks, buffleheads, goldeneyes, mergansers, and other duck species. She believed limits on sea ducks and coots are excessive in view of the lack of data on those species. Splits, zones, and other regulatory options that encourage hunting should not be used; rather, seasons should open Wednesday at noon so as to reduce the high harvests typically associated with Saturday openings.

Mr. Frank Anderson, President, Concerned Coastal Sportsmen's Association, spoke on behalf of several local sportsmen's groups. He requested a 50-day, 2-bird brant season, and a 35-day regular duck season. Because of the increases in teal populations and reinstatement of the September teal season elsewhere, he requested that the Service review special teal seasons for possible implementation in the Atlantic Flyway next year. He also requested that the Service evaluate the potential for a special scaup season. He sought compensatory days for those lost because of State-dictated Sunday closures. He acknowledged that this was a State problem, but noted that all four Flyway Councils supported compensation. He referred to a recently-completed report that detailed the economic benefits that would accrue from additional days should they be granted. He proposed that the additional days be given on an experimental basis; hunting would be by special permit so that the resulting hunter participation and harvest could be evaluated. He contended that use of calendar days in determining a season's length is unfair; whereas, using the number of days open to hunting would be fair.

Mr. Lloyd A. Jones, representing the Central Flyway Council and the North Dakota Game and Fish Department, pointed out that one of the primary considerations in adopting the flyway management concept was to allow for individual flyway considerations. He indicated that sex ratios on the breeding grounds important for the Central Flyway have become unbalanced due to recent years of low recruitment. Last year, mallard harvest in the Central Flyway was only 9 percent of the total U.S. harvest, while the Mississippi Flyway harvested 39 percent. For the Central Flyway, an extra drake mallard would not significantly increase mallard harvests. The Central Flyway mallard

harvest reflected a 9 males:1 hen sex ratio, while the Mississippi Flyway had a 3:1 ratio. During 1980-89, duck-hunter numbers declined 33 percent in the Central Flyway but only 18 percent in the Mississippi Flyway. Seasonal harvest per hunter in the Central Flyway was 2 ducks fewer than for the remainder of the U.S. He concluded that there are surplus drake mallards in the Central Flyway and that an additional drake mallard would not impact an assessment of framework-date changes, and that production would possibly increase because of less strife during the breeding period. In addition, he indicated that the Central Flyway Council preferred the use of floating dates instead of the proposed fixed dates for opening and closing framework dates. Finally, he complimented the Service for accepting goose and swan season recommendations from the Central Flyway.

Mr. Gerald Woodmansee, representing several local sportsmen's organizations, urged retention of three duck zones in Massachusetts; shooting hours of from one-half hour before sunrise to sunset; a 50-day, 4-bird brant season; a 35-day duck season; a 70-day, 3-bird goose season; a 107-day sea duck season; a special teal season; a special scaup season; and compensatory days for those lost to Sunday closures. He requested that objective threshold levels be developed for each species and population. He urged changes in the Migratory Bird Treaty to allow the taking of crows, cormorants, and mergansers, in part because of the impact of some species on fisheries. He urged the Service to conduct better surveys that would reflect the status of waterfowl in the Northeast and report those data as is now done for other parts of the continent. He believes that there has been a proliferation of guides and hunters involved in sea-duck hunts, and suggested that guides should be licensed as a means of regulating this activity and obtaining better information.

Mr. John M. Anderson, representing the National Audubon Society, recommended continued use of conservative bag limits, season lengths, and other frameworks because duck populations remain at severely depressed levels and there was essentially no change in the fall flight forecast. He supported the use of restrictive framework dates when adjustments in season length and bag limits are unable to produce the desired effect in harvest, and a complete season closure is undesirable. However,

whenever possible, framework dates should allow equitable harvest opportunity at the northern and southern extremes of the flyways. He supported current harvest restrictions on black ducks, pintails, redheads, and the closure on canvasbacks. The Central Flyway's request for an extra drake mallard appears unwarranted at this time. However, if mallard spring sex ratios highly favor males and if an additional drake mallard does not lead to increased hen mortality or increased mortality of other species, then it could be justified. In summary, he stated that recruitment for duck populations is the single most important determinant of population levels. Tinkering with annual hunting regulations will result in a minimal amount of recovery of North American duck populations. Full recovery will not occur until wetlands receive adequate protection, the North American Waterfowl Management Plan is fully funded, the U.S. Department of Agriculture's Conservation Reserve Program and Swampbuster Program are renewed, and normal precipitation patterns return to the prairies.

Mr. Richard Bishop, representing the Mississippi Flyway Council, requested that framework dates for duck hunting be set for multiple years. He recommended that framework dates not be used as a regulatory tool in duck harvest-management and that framework dates be the Saturday nearest October 1 to January 20. He further recommended that those States not eligible for a September teal season be allowed a 5-bird bag limit (2 of which must be teal) during the first 9 days of the regular duck season. He reiterated the Council's position opposing the release of hand-reared mallards and requested that released hand-reared mallards be considered the same as wild mallards in terms of regulations. He urged the Service to move forward with a review of the regulations governing the release and harvest of captive-reared mallards.

Mr. Brad Bales, representing the Pacific Flyway Council, stated the Pacific Flyway Council's recommendation calling for member States and the Service to adopt a moratorium against new captive-reared waterfowl release programs or the expansion of currently-existing programs in the flyway until all aspects of such programs have been reviewed by the public. The Council is concerned about biological impacts of captive-reared mallards on wild populations of waterfowl, including disease outbreaks, genetic crossing, and the confounding of various population surveys. He noted



problems surrounding the interpretation of regulations pertaining to the use of live decoys and baiting when and wherever captive-reared mallards and wild ducks are in association. The Council requested that the Service initiate a prompt, all-encompassing review and publish a position paper on this issue prior to a meeting of its Pacific Flyway Study Committee in January 1993.

Mr. Roger Holmes, representing the Minnesota Department of Natural Resources, opposed the use of framework dates in duck harvest management and requested that framework dates be stabilized at the Saturday nearest October 1 to the Sunday nearest January 20. Harvests should be managed by the use of season length and bag limit only, with other special regulations employed when needed. He commended the Service for the 1992 regulations overall.

Mr. Wayne Pacelle, representing The Fund for Animals, provided comment on the regulatory process and the lack of sufficient opportunity for public involvement. He suggested that the Service do a better job inviting public participation since many diverse views on the issue of hunting are not being considered. He claimed that decisions to allow hunting were not made on a biological basis, but simply to permit killing for sport. Consequently, many animals are crippled and suffer. He opposed presunrise hunting, duck zones, and sea-duck seasons. He indicated that coots and mergansers should not be hunted because he doubted that these species are consumed by hunters. He expressed his view that hunting seasons are too liberal and that the Service goes out of its way to exploit many populations of birds. He called for a closed season on black ducks, in order to allow populations to recover to their former status. He accused the Service of subverting the potential listing of the pintail as a candidate species under the Endangered Species Act because this might impact the hunting of other migratory game birds. Further, he thought the hunting of tundra swans for sport was repulsive and could not be defended with biological reasons.

Mr. Tom Hauge, representing the Wisconsin Department of Natural Resources, commended the Office of Migratory Bird Management and the Service for their annual efforts to compile waterfowl status information. He stated that the proposed framework dates for duck seasons are satisfactory, but requested that consideration be given to changing to floating dates of the Saturday nearest October 1 to the

Sunday nearest January 20. He also requested reinstatement of the teal bonus, and requested that the framework opening date for geese in all harvest areas for Mississippi Valley Population Canada geese be in September.

Mr. Jim Phillips, a writer residing in Maryland, discussed what he perceived to be failure in managing waterfowl by the so-called establishment. He said that nobody cares anymore about either the status or management of ducks. He said that his efforts to analyze banding data had been thwarted by the Service but that he and an associate would soon publish evidence that would contradict certain assumptions regarding harvest and survival rates of ducks. He recommended closing the season on all ducks for 2 years and, after population recovery, resume hunting with the annual harvest per hunter being limited through a tag system.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, requested reinstatement of the teal bonus and floating framework opening and closing dates for duck seasons in the Mississippi Flyway. He further requested, on behalf of the Mississippi Valley Population Canada Goose Committee and the Upper-Region Regulations Committee of the Mississippi Flyway Council, that the framework opening date for goose seasons be September 26. He commended the Service for working with Michigan during the past year on Canada goose management problems in the State.

#### **Flyway Council Recommendations and Written Comments**

The preliminary proposed rulemaking which appeared in the *Federal Register* dated May 8, 1992 (57 FR 19865), opened the public comment period for late-season migratory game bird hunting regulations. As of August 6, 1992, the Service had received 78 comments; 57 of these specifically addressed late-season issues. These late-season comments are summarized below and numbered in the order used in the May 8 *Federal Register*. Only the numbered items pertaining to late seasons for which written comments were received are included.

#### **General.**

*Council Recommendations:* The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council concurred with the proposed regulations for waterfowl except where otherwise noted below.

*Written Comments:* Waterfowl hunting regulations were endorsed by 32 individuals.

#### **1. Ducks.**

##### *A. General Harvest Strategy.*

*Written Comments:* A local organization from Massachusetts requested a continuation of shooting hours from one-half hour before sunrise to sunset.

##### *B. Framework Dates.*

*Council Recommendations:* The Atlantic Flyway Council opposed continuation of restrictive framework dates for regular duck seasons in the Atlantic Flyway. They recommended that framework dates for 1992-93 be October 1 and January 20. The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of the Saturday nearest October 1 and January 20. The Central Flyway Council recommended floating framework dates of the Saturday nearest October 1 to the Sunday nearest January 20. The Pacific Flyway Council recommended using the Saturday nearest October 1 through the second Sunday in January.

*Written Comments:* A U.S. Senator from Mississippi requested a closing date of January 20. A U.S. Congressman from Minnesota suggested that the duck season should begin as early as possible, while another U.S. Congressman from that State suggested that the season should not be delayed beyond October 3 and that the Service should consider other methods of managing the harvest.

The Mississippi Department of Wildlife, Fisheries, and Parks requested that framework dates be set at October 1 through January 20; the Alabama Department of Conservation and Natural Resources requested October 1 through the Sunday nearest January 20; the Minnesota Department of Natural Resources suggested that the season should begin on the Saturday nearest October 1; the Wisconsin Department of Natural Resources requested the Saturday nearest October 1 through January 20; and the Montana Department of Fish, Wildlife, and Parks requested an opening date no later than October 3, citing the increased likelihood that cold temperatures could shorten a delayed season.

Requests for more liberal framework dates were also received from the Minnesota and Wisconsin Waterfowl Associations, a local sportsmen's association from Wisconsin, and 14 individuals.



A local organization from Massachusetts suggested that framework dates should be manipulated this year if necessary, rather than shortening the season length.

#### C. Season Lengths.

**Council Recommendations:** The Atlantic Flyway Council, the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Central Flyway Council recommended no change in season length.

The Pacific Flyway Council recommended extending the season length from 59 days to 60 days to accommodate States with split seasons that may wish to open seasons on Saturdays and close on Sundays.

**Written Comments:** A local organization from Massachusetts requested a 35-day season for ducks and 5 individuals from Massachusetts requested 40-day seasons.

The Wisconsin Waterfowl Association endorsed the 30-day duck season; an individual from Michigan stated that he was frustrated with the shorter, 30-day seasons; and an individual from Illinois requested a 35-day season.

An individual from Nebraska expressed displeasure with the 51-day season and requested a 72-day season. Two individuals from Texas requested a 55-day season.

#### D. Closed Season.

**Written Comments:** Two individuals from California indicated that they would not be opposed to closing the waterfowl seasons for a few years in order to restore healthy waterfowl populations.

#### E. Bag Limits.

**Council Recommendations:** The Atlantic Flyway Council recommended a 3-duck daily bag limit.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that States not offered a September teal season be offered a bag limit that includes a provision for 2 additional teal during the first 9 days of the regular duck season.

The Central Flyway Council recommended that the regular duck bag limit be increased from 3 to 4, that the mottled duck bag limit be increased from 1 to 3 for Texas, and that the bag limit for mallard drakes be increased from 2 to 3. The Council further recommended that a 25-point category be established in the point system for gadwall, green-winged teal, blue-winged teal, and northern shovelers.

The Pacific Flyway Council recommended no change in bag limits.

**Written Comments:** The Wisconsin Waterfowl Association endorsed the 3-duck limit. An individual from Michigan and another from Nebraska requested a larger bag limit.

An individual from Colorado requested a return to a 3-drake mallard limit, while an individual from South Carolina requested a bag limit of 3 for wood ducks.

A local organization from Wisconsin requested an additional 2 teal in the bag for the first 9 days of the season.

A local organization and two individuals from Texas requested continuation of the point system, but with revised point values that would allow additional harvest on species which are abundant.

#### F. Zones and Splits.

**Council Recommendations:** The Pacific Flyway Council recommended that the Southern San Joaquin Zone in California, established on an emergency basis in 1991 due to drought, be retained during the 1992-93 season.

**Written Comments:** A local organization from Massachusetts requested that the zoning concept should be continued as currently established. An individual from New Jersey requested that split seasons be discontinued.

#### G. Special/Species Management.

##### i. Canvasback Harvest Management.

In March, the Atlantic Flyway Council recommended that the Service develop an interim strategy for canvasback harvests to be used until the establishment of stabilized-regulations guidelines. This interim strategy should be based on current biological data, including information that indicates the east/west delineation of the canvasback population is no longer warranted. The Council stated that this interim strategy should be equitable among the four flyways.

In August, the Atlantic Flyway Council recommended that the Atlantic Flyway be allowed to initiate a season on canvasbacks when the continental breeding population index exceeds 450,000 (3-year running average) and the breeding habitat in the prairie-pothole portion of the U.S. and Canada exceeds 3 million ponds. They further recommended that this season continue until the revised breeding population index falls below a 3-year running average of 400,000. In the Atlantic Flyway, regulations under a limited season would allow one canvasback under the conventional bag. The Council

also recommended that all four flyways be given the opportunity to open a season on canvasbacks during the 1992-93 season.

In August, the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no change for canvasbacks during the 1992-93 season.

In March, the Central Flyway Council recommended that a season be initiated when the continental breeding population index exceeds 450,000 (3-year average) and the pond index exceeds 3 million. This season would continue until the continental breeding population index falls below 400,000 (3-year average). The Council stated that banding data indicated that the canvasback population is not comprised of two distinct subpopulations and that all flyways should be given an opportunity to conduct a season. The Council recommended that this interim strategy should be used until stabilized regulations becomes operational.

In August, the Central Flyway Council recommended that a canvasback season for drakes be offered and that the season on female canvasback should remain closed.

In March, the Pacific Flyway Council recommended that the Service continue to manage canvasback harvest by subunits. They strongly believe that management actions are most effective when they recognize biological differences among and within populations. Although Western and Eastern canvasback populations are not completely distinct, biological differences do exist that should be recognized in management design. The Council specifically recommended that the quality of the midwinter survey be improved with respect to canvasbacks in the western United States, that the aggregate canvasback/redhead bag limit should be maintained, that the Service evaluate the cost of trapping and banding required to better determine distribution and derivation of canvasback harvests, and that harvest strategies be developed that distinguish between western and eastern populations, but remain sensitive to population overlap.

In August, the Pacific Flyway Council recommended continuation of a 2-duck aggregate bag limit of canvasbacks and redheads for their Flyway.

**Note:** In the May 8 Federal Register, the Service indicated that more work is needed to identify an appropriate harvest strategy before considering nationwide open seasons, because of the canvasback's need for protection when populations reach low levels.



Consequently, the Service requests that the Flyway Councils continue to work with the Service to develop appropriate long-term harvest strategies for canvasbacks. As an interim strategy during the 1992 regulations-development process, the Service will continue to use existing criteria, including eastern and western population thresholds, for determining seasons.

#### ii. Pintail Harvest Management.

**Council Recommendations:** In March, the Central Flyway Council recommended that the Service maintain the current harvest regulations unless a significant decline occurs in the breeding population index. If such a decline should occur, coordination should be initiated between the Service and the flyways to develop options for conservation of the pintail. The Council recognized the low population status of the pintail but indicated that sport harvest was not the cause of the decline, there is no biological justification for closing the pintail season, and a closed season for pintails would complicate regulations and hamper habitat-management efforts.

In March, the Pacific Flyway Council recommended that harvest-management options short of season closures should be pursued. Total season closure seems inappropriate because of the lack of evidence that demonstrates population levels have been or are now being affected by harvest. Closure also may negatively impact support for ongoing habitat-enhancement efforts.

In August, all Flyway Councils recommended that there be no change in regulations for pintails during the 1992-93 seasons.

**Written Comments:** An individual from Michigan urged the Service to take serious action in light of the low population status of pintails.

#### iii. Other Species/Special Seasons.

**Council Recommendations:** The Pacific Flyway Council requested that the Service provide harvest-management guidelines for the 1993-94 season that would allow additional harvest opportunity on duck species that are near or above historic high levels (e.g., gadwall, shoveler, green-winged teal).

**Written Comments:** A local organization from Massachusetts requested a special scaup season.

#### 3. Mergansers.

**Council Recommendations:** The Atlantic and Central Flyway Councils and both regulations committees of the Mississippi Flyway Council recommended that there be no change in

regulations for mergansers during the 1992-93 season.

#### 4. Canada Geese.

**Council Recommendations:** In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for the impacts on the Southern James Bay Population of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause excessive cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

#### A. Special Seasons.

The Service is concerned about the protection of nontarget Canada goose populations during special seasons, and continues to believe that most Canada goose harvest-management objectives can be addressed through the regular Canada goose hunting-season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. As indicated in the June 19, 1992, *Federal Register* (57 FR 27672), the Service has become aware of the need to modify the special-season criteria previously published in the September 26, 1991, *Federal Register* (56 FR 49104). The proposed modified criteria are:

#### Criteria for Special Canada Goose Seasons

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season. In the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese, seasons may not exceed 10 consecutive days and will generally be held between September 1 and September 10. In the

Central and Pacific Flyways, seasons may not exceed 30 consecutive days, generally between September 1 and September 30, and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held after the regular season and prior to February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. Initially, all seasons will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of Agreement and will include at least the following:

- A. Conduct neck-collar observations (where appropriate) and population surveys beginning at least 1 year prior to the requested season and continuing during the experiment. For early seasons to be held after September 10, data-gathering must begin at least 2 years prior to the requested season.

- B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

- C. Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

- D. Analyze relevant band-recovery data.

- E. Estimate hunter activity and harvest.

- F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

For early seasons held after September 10, the Service emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria for special early Canada goose seasons.

**Council Recommendations:** As mentioned above, the Lower-Region Regulations Committee of the Mississippi Flyway Council emphasized



that special seasons should adhere to the criteria established by the Service.

**Written Comments:** The Illinois Department of Conservation suggested that existing regulations do not fairly or adequately address the issue of impacts of early Canada goose seasons on non-target populations exceeding population objectives. The Wisconsin Department of Natural Resources remained concerned about the special-season criteria and believe that some modifications are appropriate. The Minnesota Department of Natural Resources requested that the Service provide assistance to States experiencing increasing problems with breeding Canada goose flocks. They noted that the Service obtains harvest and hunter-activity information for September teal seasons, yet States are required to obtain this information for seasons designed to control nuisance Canada geese. The North American Wildlife Foundation suggested that States experiencing nuisance goose problems, such as Illinois, should not be required to meet criteria for nonmigrant composition of the harvest.

#### i. Early Seasons:

Comments and Service responses were included in the early-season final frameworks published in the *Federal Register* on August 21, 1992.

#### ii. Late Seasons:

**Council Recommendations:** The Atlantic Flyway Council recommended that the closing date for Connecticut's late resident Canada goose season in the South Zone be extended to February 14. They also recommended that Georgia be permitted to conduct an experimental late resident Canada goose season in the northern and southwestern portions of the State during the 1993-1995 seasons, and that Pennsylvania be permitted to initiate an experimental late resident Canada goose season between January 20 and February 5 along portions of the Susquehanna and Juniata Rivers during the 1993-95 seasons.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the late seasons in the Twin Cities Metropolitan Goose Zone and Olmsted County could be discontinued if the regular seasons in these areas were extended by 10 days. The Committee further recommended that the special late season in the Southern Michigan Goose Management Unit begin as early as January 2.

**Written Comments:** The South Carolina Wildlife and Marine Resources Department requested that the bag limit during their special late Canada goose

season be increased from 1 per season to 1 per day. The Wisconsin Department of Natural Resources requested that the late season in the Rock Prairie Subzone be discontinued. A local organization from Massachusetts requested continuation of the late seasons in that State.

#### B. Regular Seasons:

**Council Recommendations:** The Atlantic Flyway Council recommended that the harvest of Atlantic Population Canada geese be reduced by 60 percent from 1985-87 levels to allow recovery of this population. This strategy would begin in 1992 and continue for a minimum of 3 years.

In the Southern Region, they recommended that hunting of migrant geese be suspended in North and South Carolina, Georgia, Florida, and the Back Bay area of Virginia whenever the estimate for this population falls below 30,000 geese. A limited harvest consistent with continued population growth would be considered when the population ranges between 30,000-60,000 birds.

In the Chesapeake Region (Maryland, Delaware, and most of Virginia), it was recommended that the Canada goose hunting season frameworks be as follows: 60 days between November 16-January 20; 1 goose per day for at least the first 20 days; and no more than 2 geese per day thereafter.

In the Mid-Atlantic Region (New Jersey and the southern portions of New York and Pennsylvania), it was recommended that the Canada goose hunting season be as follows: 70 days between October 15 and January 31; no more than 15 days may occur before November 16; the bag limit shall be no more than 1 goose per day prior to November 16; 2 geese per day prior to January 1; and 3 geese per day from January 1 thereafter; and the bag limit shall be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the New England Region (including northern portions of New York and Pennsylvania), it was recommended that the seasons be as follows: 70 days between October 1 and January 31; the bag limit shall be no more than 1 goose per day prior to October 16; no more than 2 geese per day prior to January 1; and no more than 3 geese per day from January 1 thereafter; and the bag limit shall be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the Pennsylvania Counties of Erie, Mercer, and Butler, the season shall be

70 days between October 1 and January 31; the bag limit shall be no more than 1 goose per day prior to October 16; and 2 geese per day thereafter; and the bag limit shall be no more than 1 goose per day for the first 8 days of the season, regardless of when the opening date occurs. In Crawford County, the season shall be 70 days with a daily bag limit of 1 goose.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service establish a 3-year experimental season in Boone, Callaway, Cole, and Howard Counties of central Missouri. This season would be 9-15 days long and would be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate. The recommended season would be in addition to the regular Canada goose season.

The Committee also recommended that the Canada goose frameworks in Wisconsin be modified as follows: (1) eliminate the Pine Island and Theresa Zones and incorporate these areas into the Horicon Zone; (2) establish permit-issuance procedures for times when Wisconsin's Federally-assigned harvest quota for Canada geese exceeds 160,000; and (3) liberalize hunting authorizations for times when Wisconsin's harvest quota exceeds 200,000. When Wisconsin's quota exceeds 160,000 birds, tag-zone hunters will be authorized to harvest a limited number of birds (controlled by tags) in the Exterior Zone, and Exterior-Zone hunters will be allowed to harvest a limited number of birds (controlled by tags) in the Horicon Zone. When Wisconsin's quota exceeds 200,000 birds, all zone restrictions will be dropped and hunters will be permitted to hunt anywhere in the State if they first obtain a Canada goose hunting permit, as long as an acceptable harvest-monitoring system is in place.

In August, the Committee recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26, and that the restriction for Canada geese in the daily bag limit be changed from 3 to 2. They also recommended a number of changes in season length, bag limits, and/or harvest quotas in areas used by Mississippi Valley Population Canada geese.

The Committee also recommended extending the season in 9 northeastern counties of Illinois by 9 days and by 10



days in those portions of the Southeast Goose Zone of Minnesota within the Twin Cities Metropolitan Zone and Olmsted County. The Committee recommended that management zones in Ohio be modified to better focus restrictions needed for the Southern James Bay Population of Canada geese.

The Lower-Region Regulations Committee recommended that a new zone be created in northwest Arkansas, and that a 14-day season be offered. The Committee also recommended several restrictions in season length, bag limits, and/or harvest quotas in Kentucky, Tennessee, and portions of Mississippi in anticipation of low production and reduced fall flights of Mississippi Valley Population Canada geese this year.

In March, the Central Flyway Council recommended that an interim harvest strategy be developed for dark geese in the Central Flyway. This strategy should endorse attempts to increase harvest of all dark geese in the Western Tier and increase harvest on large Canada geese, while maintaining harvest of small Canada geese and white-fronted geese, in the Eastern Tier. During the interim, management plans will be revised.

In August, the Central Flyway Council recommended that North Dakota's fixed date for changing bag limits from 1 to 2 would be changed from October 19 to a floating date of the Saturday nearest October 20.

The Pacific Flyway Council recommended that the Salmon River Valley no longer be the boundary between two areas, but that it be added to the Southeastern Area. They also recommended eliminating the District 22 Canada goose harvest zone in the Southern Zone of California, thereby allowing identical seasons and limits throughout the Southern Zone.

The Pacific Flyway Council also recommended adjustments to season length and bag limits in 5 Oregon counties. In Lake, Klamath, and Harney Counties, the season length should be increased from 93 days to 100 days; bag and possession limits for dark and white geese should be separate; and the daily bag limit for dark geese should be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). In Baker County, the daily bag limits should be increased from 2 to 3 geese and the closing date should be extended from the first Sunday in January to the Sunday closest to January 20. In Malheur County, the bag limit should be increased from 2 to 3 Canada geese during the portion of the season preceding November 16; but, on November 16 and thereafter, the bag limit should remain at 2 Canada geese.

**Written Comments:** A local organization from Massachusetts requested that their State be able to maintain a 70-day season with the same limits as last year. An individual from Delaware supported the restrictions on Canada geese in the Atlantic Flyway. An individual from Nebraska requested a 90-day, 2-bird season for dark geese. An individual from California requested that the bag limit be expanded to include 3 Canada geese per day.

#### 5. White-fronted Geese.

**Council Recommendations:** The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves white-fronted geese. See item 4. Canada Geese.

The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties, the season length should be increased from 93 days to 100 days, bag and possession limits for dark and white geese should be separate, and the daily bag limit for dark geese should be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). The season on white-fronted geese should not open before October 24 (previously November 1). In Baker County, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20. The Council further recommended that for the Northeastern Zone of California, the daily bag limit may be increased from 1 to 2 white-fronted geese per day, and the season length should remain at 24 days.

#### 6. Brant.

**Council Recommendations:** The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves brant. See item 4. Canada Geese.

**Written Comments:** A local organization from Massachusetts requested a 50-day season with a 4-bird limit.

#### 7. Snow and Ross's Geese.

**Council Recommendations:** The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommended that season length and bag limit in the eastern-tier States should be expanded to 107 days with a bag limit of 10. In addition, the bag limit for the Middle Rio Grande Valley of New Mexico should be increased to 10 per day. The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties, the season length should be increased from 93 days to 100 days, and bag and possession limits for dark and white geese should be separate. In Baker County, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20.

#### 8. Tundra Swans.

**Council Recommendations:** The Central Flyway Council recommended that an additional 500 tundra swan hunting permits be allocated to South Dakota. This change would result in a total allocation of 1,500 permits for South Dakota.

#### 23. Other.

##### A. Compensatory Days.

**Council Recommendations:** The Atlantic Flyway Council recommended that the Service allow for compensatory days for days lost during the duck season, on a day-for-day basis (not to exceed 30 days), in Atlantic Flyway States where Sunday hunting is prohibited statewide by State law, on an experimental basis in 1992-93 and 1993-94.

**Written Comments:** Five individuals from Massachusetts and an individual from Virginia requested compensatory days for those days lost due to Sunday-hunting prohibitions.

##### B. Captive-reared Mallards.

**Council Recommendations:** The Atlantic Flyway Council complimented the Service for recognizing the potentially serious impacts of released captive-reared mallards on wild waterfowl populations due to possible spread of disease, the deterioration of data collection for management programs, the compromise of genetic integrity, and law enforcement conflicts. The Council extended its thanks to the Service for undertaking a review of this



issue and urged the Service to develop a policy regarding these releases and their potential impacts.

The Mississippi Flyway Council recommended that the provisions of section 21.13 of 50 CFR 21 should only apply to restrictive situations (i.e., tower shoots). When mallards are free-flying they would be afforded full protection under the Migratory Bird Treaty Act and count toward the daily bag limit. In order to minimize the harvest of wild birds during tower shoots, shooting should only be permitted between the tower and the feeding area. The Council also suggested that shooting not be allowed directly on the feeding area or within a minimal distance of 100 yards from the feeding area.

The Pacific Flyway Council requested its member States and the Service to adopt a moratorium against new captive-reared waterfowl release programs or the expansion of currently existing programs in the Pacific Flyway. This moratorium would remain in effect until the Service solicits public comment on all aspects of captive-reared waterfowl release programs and publishes a position paper, at which time the Council will again evaluate its position on this issue. The Council requested that the Service report progress on this issue to the council prior to the January Flyway Study Committee meeting.

The Pacific Flyway Council is on record as discouraging captive-reared waterfowl programs. They indicated that there is serious concern about the biological impacts on wild populations of waterfowl. These concerns include disease outbreaks, genetic crossing, and the impacts on various biological surveys. There are also problems with the interpretation of Federal laws dealing with live decoy and baiting regulations. The Council believes that a complete review of this issue needs to be undertaken so that sound management decisions protecting wild populations of waterfowl can occur.

#### Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public,

other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

#### Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but a substantive response to individual comments may not be provided.

#### NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the *Federal Register* on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations, those are developed annually. The annual regulations and options were considered in the Environmental

Assessment, "Waterfowl Hunting Regulations for 1992."

#### Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

#### Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 *Federal Register*, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

#### Memorandum of Law

The Service published its Memorandum of Law, required by



Section 4 of Executive Order 12291, in the early-season final frameworks **Federal Register** document published on August 21, 1992.

#### Authorship

The primary authors of this proposed rule are David F. Caithamer and William O. Vogel, Office of Migratory Bird Management.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992-93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703-712), and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a-d and e-j).

Dated: August 18, 1992.

Mike Hayden

Assistant Secretary for Fish and Wildlife and Parks

#### Proposed Regulations Frameworks for 1992-93 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. Late-season frameworks are summarized below:

#### General

**Shooting and Hawking (taking by falconry) Hours:** Unless otherwise specified, from one-half hour before sunrise to sunset daily, for all species and seasons.

**Possession Limits:** Unless otherwise specified, possession limits are twice the daily bag limit.

**Area-Specific Provisions:** Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

#### Atlantic Flyway

Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

#### Ducks, Coots, and Mergansers

**Hunting Season:** Not more than 30 days.

**Outside Dates:** Between October 1, 1992, and January 20, 1993.

**Duck Limits:** The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

**Closures:** The seasons on canvasbacks and harlequin ducks are closed.

**Sea Ducks:** In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

**Merganser Limits:** The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

**Coot Limits:** The daily bag limit is 15 coots.

**Lake Champlain Zone, New York:** The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

**Zoning and Split Seasons:** Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may zone and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments. Zone descriptions that differ from those published in the September 26, 1991, **Federal Register** (at 56 FR 49104) are described in a later portion of this document.

#### Canada Geese

**Season Lengths, Outside Dates, and Limits:** Unless specified otherwise, seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

#### Connecticut:

**North Zone—**70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**South Zone—**70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening. In addition, a special experimental season may be held between January 15 and February 15, with 5 geese per day.

**Delaware:** 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese thereafter.

**Florida:** Closed season.

**Georgia:** In specific areas, an experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

**Maine:** 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**Maryland:** 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese thereafter.

**Massachusetts:** 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

**New Hampshire:** 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**New Jersey:** 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

#### New York:

**Northeast Zone—**70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**Remainder of State—**70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

#### North Carolina:

**East of I-95—**Suspended.

**West of I-95—**Suspended.

#### Pennsylvania:

**South Zone—**70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental late resident Canada goose season may be



held along portions of the Susquehanna and Juniata Rivers from January 20 to February 5 with 5 geese per day.

**Erie, Mercer, and Butler Counties**—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese thereafter; 1 goose for the first 8 days after the opener.

**Crawford County**—70 days between October 1 and January 20; with 1 goose per day.

**Remainder of State**—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**Rhode Island**: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**South Carolina**: Suspended regular season. A special 4-day season for resident Canada geese may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15, with a limit of 1 Canada goose per season.

**Vermont**: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

**Virginia**:  
**Back Bay**—Suspended.

**Remainder**—60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese thereafter.

**West Virginia**: 70 days between October 1 and January 20, with 3 geese per day.

## Light Geese

**Definition**: For purpose of hunting regulations listed below, the collective term "light" geese includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

**Season Lengths, Outside Dates, and Limits**: States may select a 107-day season between October 1, 1992, and February 10, 1993, with 5 geese per day. States may split their seasons into two segments.

## Atlantic Brant

**Season Lengths, Outside Dates, and Limits**: States may select a 50-day season between October 1, 1992, and January 20, 1993, with 2 brant per day.

## Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan,

Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

## Ducks, Coots, and Mergansers

**Hunting Seasons**: Not more than 30 days.

**Outside Dates**: Between October 1, 1992, and January 20, 1993.

**Duck Limits**: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

- 100 points—female mallard, pintail, black duck, redhead, hooded merganser
- 50 points—male mallard, wood duck
- 35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

**Closures**: The season on canvasbacks is closed. **Merganser Limits**: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

**Coot Limits**: The daily bag limit is 15 coots.

**Zoning and Split Seasons**: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks. Zones not described herein are described in the September 26, 1991, **Federal Register** (at 56 FR 49104).

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

**Pymatuning Reservoir Area, Ohio**: The waterfowl seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

## Geese

**Definition**: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.

Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

**Split Seasons**: Seasons for geese may be split into two segments.

**Season Lengths, Outside Dates, and Limits**: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 3, 1992) and January 31, 1993, and 80 days for light geese between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993. The daily bag limit is 7 geese, to include no more than 2 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

**Alabama**: The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

**Arkansas**: The season for Canada geese may extend for 23 days in the East Arkansas Zone. In the West Arkansas Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

**Illinois**: The total harvest of Canada geese in the State will be limited to 79,000 birds. In the:

(a) Southern Illinois Quota Zone - The season for Canada geese will close after 79 days or when 39,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. If any of the following conditions exist after December 20, 1992, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.
2. 10 consecutive days of daily high temperatures less than 20 degrees F.
3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 79 days or when 11,850 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession.



(c) Knox-Fulton Zone—The season for Canada geese may not exceed 79 days. Limits are 2 Canada geese daily and 4 in possession.

(d) Remainder of the State—The season for Canada geese may extend for 79 days in the respective duck-hunting zones, except in Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties, where the season may not exceed 88 days. Limits are 2 Canada geese daily and 4 in possession.

*Indiana:* The total harvest of Canada geese in the State will be limited to 19,000 birds. In:

(a) Posey County—The season for Canada geese will close after 70 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese, except in LaGrange and Steuben Counties and on the Kankakee and Jasper-Pulaski Fish and Wildlife Areas, where the daily bag limit is 1.

*Iowa:* The season may extend for 70 days. The daily bag limit is 2 Canada geese. The season for geese in the Southwest Goose Zone may be held at a different time than the season in the remainder of the State.

*Kentucky:* In the:

(a) Western Zone—The season for Canada geese may extend for 79 days, and the harvest will be limited to 22,400 birds. Of the 22,400-bird quota, 14,560 birds will be allocated to the Ballard Reporting Area and 4,260 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 79-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 79 days. The season in Fulton County may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

*Louisiana:* Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993, in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an

experimental 9-day season for Canada geese may be held during January 22–30, 1993. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the experimental Canada goose season must possess a special permit issued by the State.

*Michigan:* The total harvest of Canada geese in the State will be limited to 54,600 birds. In the:

(a) North Zone:

(1) West of Forest Highway 13—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(2) Remainder of North Zone—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) South Zone:

(1) Allegan County GMU—The season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose through November 14 and 2 Canada geese thereafter.

(2) Muskegon Wastewater GMU—The season for Canada geese will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(3) Saginaw County GMU—The season for Canada geese will close after 40 days or when 4,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU—The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone:

(i) West of U.S. Highway 27/127—The season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(ii) East of U.S. Highway 27/127—The season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(d) Southern Michigan GMU—An experimental late special Canada goose season of up to 30 days may be held between January 9 and February 7, 1993. The daily bag limit is 2 Canada geese.

*Minnesota:* In the:

(a) West Central Goose Zone—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Goose Zone the season will close after 40 days

or when a harvest of 6,000 birds has been achieved, whichever occurs first. Throughout the West-Central Zone, the daily bag limit is 1 Canada goose.

(b) Southeast Goose Zone—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese. In the Twin Cities Metropolitan Zone and Olmsted County, the season may not exceed 80 days.

(c) Remainder of the State—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. *Mississippi:* The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

*Missouri:* In the:

(a) Swan Lake Zone—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Central Missouri Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

*Ohio:* The season may extend for 70 days, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBZ and Northeast SJBZ Zones, where the daily bag limit will be 1 Canada goose.

*Tennessee:* In the:

(a) Northwest Tennessee Zone—The season for Canada geese may extend for 72 days, and the harvest will be limited to 8,900 birds. Of the 8,900-bird quota, 6,200 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 72-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed a total of 72 days. The season may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Southwest Tennessee Zone—The season for Canada geese may extend for 58 days, and the harvest will be limited to 500 birds. The daily bag limit is 2 Canada geese.



(c) Kentucky Lake Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

*Wisconsin:* The framework opening date for all geese is September 26. The total harvest of Canada geese in the State will be limited to 71,200 birds. In the:

(a) Horicon Zone—The harvest of Canada geese is limited to 45,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(b) Collins Zone—The harvest of Canada geese is limited to 1,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(c) Exterior Zone—The harvest of Canada geese is limited to 20,000 birds. The season may not exceed 80 days, except as noted below. The daily bag limit is 1 Canada goose, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 80 days in each duck zone. In the North-Duck-Zone portion of the Subzone, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter; in the South-Duck-Zone portion, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter. In the Brown County Subzone, an experimental late special season to control local populations of giant Canada geese may be held during December 1–31. The daily bag limit during this special season is 2. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above. This closure will not apply to the special late-season giant Canada goose season in the Brown County Subzone.

*Additional Limits:* In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

*Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures:* When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey

County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

*Shipping restrictions:* In Illinois and Missouri, and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

#### Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

#### Ducks (including mergansers) and Coots

*Hunting Seasons:* Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days start no earlier than the Saturday closest to December 10 (December 12, 1992). Seasons in the Low Plains Unit may include no more than 39 days.

*Outside Dates:* October 1, 1992, through January 20, 1993.

*Duck Limits:* The daily bag limit is 3, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck

50 points—male mallard, wood duck

35 points—All other ducks and mergansers

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

*Closures:* The season on canvasbacks is closed.

*Merganser Limits:* Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

*Coot Limits:* The daily bag limit is 15 coots.

*Zoning and Split Seasons:* Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks. Zones not described herein are described in the September 26, 1991, Federal Register (at 56 FR 49104).

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

#### Geese

*Definitions:* In the Central Flyway, "geese" includes all species of geese and brant; "dark geese" includes Canada and white-fronted geese and black brant; and "light geese" includes all others.

*Season Lengths, Outside Dates, and Limits:* Seasons may be split into two segments. The Saturday nearest October 1 (October 3, 1992), through January 31, 1993, for dark geese and the Saturday nearest October 1 (October 3, 1992), through the Sunday nearest February 15 (February 14, 1993), except in New Mexico where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

*Colorado:* No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.



**Kansas:** For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For Light Goose Units 1 and 2, no more than 107 days, with a daily bag limit of 10.

**Montana:** No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

**Nebraska:** For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1992), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

**New Mexico:** No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10. **North Dakota:** For dark geese, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese until the Saturday nearest October 20 (October 17, 1992), and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 107 days, with a daily bag limit of 10.

**Oklahoma:** For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

**South Dakota:** For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 8, 1992), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

**Texas:** West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days. The daily bag limit is 1 Canada goose and 1 white-fronted goose during the first 72 days; during the last 7 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese east of U.S. 81, no more than 107 days, with a daily bag limit of 10.

**Wyoming:** No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

#### Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

#### Ducks, Coots, and Common Moorhens

**Hunting Seasons:** Concurrent 59-day seasons on ducks (including mergansers), coots, and common moorhens may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

**Outside Dates:** Between October 1, 1992, and January 20, 1993.

**Duck and Merganser Limits:** The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads, or 1 of each.

**Coot and Common Moorhen Limits:** The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

**Zoning and Split Seasons:** Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons for ducks (including mergansers), coots, and common moorhens by zones described later in these frameworks. Zones not described herein are described in the September 26, 1991, *Federal Register* (at 56 FR 49104).

Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments either statewide or in each zone. Colorado and Montana may split their duck seasons into three segments.

**Colorado River Zone, California:** Duck, coot, and common moorhen seasons and limits shall be the same as seasons and limits selected by Arizona.

#### Geese (including Brant)

**Season Lengths, Outside Dates, and Limits:** Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday closest to October 1 (October 3, 1992), and the Sunday closest to January 20 (January 17, 1993), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 light geese (including snow, blue, and Ross) and 3 dark geese (all other species of geese, including brant). In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

**Closures:** There will be no open season on Aleutian Canada geese in the Pacific Flyway and no open season on cackling Canada geese in California, Oregon, and Washington; and those three States must include a statement on the closure for both those subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

**Arizona:** The daily bag limit for dark geese may not include more than 2 Canada geese.



**California:**

**Northeastern Zone**—White-fronted geese may be taken only during the first 23 days of such season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 2 white-fronted geese.

**Colorado River Zone**—The seasons and limits must be the same as those selected by Arizona. Southern Zone - The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

**Balance-of-the-State Zone**—A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before November 30, 1992, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese. In the Western Canada Goose Hunt Area, the take of Canada geese other than cackling and Aleutian Canada geese is allowed.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23, 1992.

**Brant Season:** A statewide, 30-consecutive-day season on brant may be selected.

**Colorado:** The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese.

**Idaho:**

**10 Northern Counties Area**—The daily bag limit may not include more than 3 geese.

**Southwestern Area**—The season must end on or before the first Sunday in January (January 3, 1993) with a daily bag limit of 3 geese, that may not include more than 2 Canada geese.

**Southeastern Area, including the Ft. Hall-American Falls Zone**—The season must end on or before the second Sunday in January (January 10, 1993); the daily bag limit is 3 geese.

**Montana:**

**East of Divide Zone**—The season must end on or before the second Sunday in January (January 10, 1993).

**West of Divide Zone**—The season must end on or before the first Sunday

in January (January 3, 1993). The daily bag limit on dark geese may not include more than 2 Canada geese.

**Nevada:**

**Clark County Zone**—The daily bag limit of dark geese may not include more than 2 Canada geese.

**New Mexico:** The daily bag limit for dark geese may not include more than 2 Canada geese.

**Oregon:**

**Eastern Zone**—In the Columbia Basin Goose Area, the season may be an additional 7 days.

**Western Zone**—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 110 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

**Malheur County Zone**—The season must end on or before the first Sunday in January (January 3, 1993). From November 16, 1992, through the remainder of the season, the daily bag limit of dark geese may not include more than 2 Canada geese.

**Lake, Klamath, and Harney Counties Zone**—The season length may be 100 days. The dark goose limits are 4 per day and 8 in possession; and the dark goose limits may not include more than 2 white-fronted geese per day and 4 in possession. White-fronted geese may not be taken before October 24 during the regular goose season. Light goose limits are 3 per day and 6 in possession and additional to those for dark geese.

**Brant Season**—A 16-consecutive-day season on brant may be selected.

**Utah:**

**Washington County Zone**—The daily bag limit for dark geese may not include more than 2 Canada geese.

**Remainder-of-the-State Zone**—The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese. In Cache County, the combined special September Canada goose season and the regular goose season shall not exceed 93 days. Washington: The daily bag limit is 3 geese.

**Eastern Zone**—In the Columbia Basin Goose Area, the season may be an additional 7 days.

**Western Zone**—In the Lower Columbia River Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. For designated areas, seasons on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

**Brant Season**—A 16-consecutive-day season on brant may be selected.

**Wyoming:** In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 93 days. The season must end on or before the second Sunday in January (January 10, 1993).

**Tundra Swans**

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

**In the Atlantic Flyway**

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

**In the Central Flyway**

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 1,500 permits may be issued. The experimental season must run



concurrently with the season for taking light geese.

#### In the Pacific Flyway

—A 93-day season may be selected between the Saturday closest to October 1 (September 28, 1992), and the Sunday closest to January 20 (January 19, 1993). Seasons may be split into 2 segments.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, and Pershing Counties.

—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

#### Area, Unit, and Zone Descriptions

Except for the following descriptions, the Service does not propose any changes to those zone, area, and unit descriptions published in the September 26, 1991, Federal Register (at 56 FR 49104). The Service will publish descriptions of all waterfowl zones, areas, and units in the late-season final frameworks.

#### Ducks

##### Pacific Flyway

###### California

**Balance-of-the-State Zone:** The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

#### Geese

##### Atlantic Flyway

###### Georgia

**Special Season Area:** See State regulations.

###### Pennsylvania

**North Zone:** That portion of the State north of I-80 from the Ohio border to Route 220, north of Route 220 from I-80 to I-180, north and east of I-180 from Route 220 to I-80, and north of I-80 from I-180 to the Delaware River.

**Crawford County:** All of Crawford County.

**Erie, Mercer, and Butler Counties:** All of Erie, Mercer, and Butler Counties.

**South Zone:** The remaining portion of Pennsylvania.

##### Mississippi Flyway

###### Arkansas

**East Arkansas Zone:** Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

**West Arkansas Zone:** Benton, Carroll, Boone, Marion, Baxter, Fulton, Izard, Sharp, Stone, Searcy, Newton, Madison, Washington, Crawford, Franklin, Johnson, Pope, Van Buren, Conway, Cleburne, and Faulkner Counties, and those portions of Sebastian, Logan, Yell, and Perry Counties lying north of a line extending along State Highway 10 from the Oklahoma border east to Perry, south on State Highway 9 to State Highway 60, then east on State Highway 60 to the Faulkner County line.

###### Illinois

Same zones as for ducks but in addition:

###### Central Zone:

**Knox-Fulton Zone:** The following counties or portions of counties: Fulton (Buckheart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, and Putnam Townships, and that portion of Banner Township bounded on the north by Illinois Highway 9 and on the east by U.S. Highway 24) and Knox Counties.

###### South Zone:

**Southern Illinois Quota Zone:** Alexander, Jackson, Union, and Williamson Counties.

**Rend Lake Quota Zone:** Franklin and Jefferson Counties.

###### Missouri

Same zones as for ducks but in addition:

###### North Zone:

**Swan Lake Zone:** That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

###### Middle Zone:

**Schell-Osage Zone:** That portion of the State encompassed by a line running east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

**Central Missouri Zone:** All or portions of Boone, Callaway, Cole, and Howard Counties.

###### Ohio

**Pymatuning Area:** Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

**Early-season Canada Goose Area—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.**

**Lake Erie SJBZ Zone:** Those portions of Lucas, Wood, Ottawa, Sandusky, and Erie Counties bounded by the Maumee River on the west, Ohio State Route 51, U.S. Highway 80/90, and State Route 6

on the south, the Huron River on the east, and the Ohio State border on the north.

**Northeast SJBZ Zone:** Those portions of Ashtabula and Trumbull Counties bounded by Ohio State Route 534 on the west, State Route 82 on the south, the Pennsylvania border on the east, and State Route 6 on the north.

###### Wisconsin

**Horicon Zone:** The area encompassed by a border commencing at the intersection of Highway 11 and the Fox River in Winnebago County, then running westerly along Highway 11 to its intersection with the west boundary of Winnebago County, then southerly along the west boundary of Winnebago County to its intersection with the north boundary of Green Lake County, then westerly along the north boundary of Green Lake County to its intersection with the north boundary of Marquette County, then westerly along the north boundary of Marquette County to its intersection with Highway 22, then southerly along Highway 22 to its intersection with Highway 33, then westerly along Highway 33 to its intersection with Highway 16, then westerly along Highway 16 to its intersection with Weyh Road, then southerly along Weyh Road to its intersection with County Highway 0, then southerly along County Highway 0 to its intersection with the west boundary of Section 31, then southerly along the west boundary of Section 31 to its intersection with the Sauk County/Columbia County boundary, then southerly along the Sauk County/Columbia County boundary to its intersection with Highway 33, then westerly along Highway 33 to its intersection with Interstate 90/94, then southerly along Interstate 90/94 to its intersection with Highway 60, then easterly along Highway 60 to its intersection with Highway 83, then northerly along Highway 83 to its intersection with Highway 175, then northerly along Highway 175 to its intersection with Highway 33, then easterly along Highway 33 to its intersection with Highway 45, then northerly along Highway 45 to its intersection with the east shore of the Fond Du Lac River, then northerly along the east shore of the Fond Du Lac River to its intersection with Lake Winnebago, then northerly along the western shoreline of Lake Winnebago to its intersection with the Fox River, then westerly along the Fox River to its intersection with Highway 11.

**Collins Zone:** The area encompassed by a border commencing at the intersection of Hilltop Road and Collins



Marsh Road in Manitowoc County, then running westerly along Hilltop Road to its intersection with Humpty Dumpty Road, then southerly along Humpty Dumpty Road to its intersection with Poplar Grove Road, then easterly and then southerly along Poplar Grove Road to its intersection with County Highway JJ, then southeasterly along County Highway JJ to its intersection with Collins Road, then southerly along Collins Road to its intersection with the Manitowoc River, then southeasterly along the Manitowoc River to its intersection with Quarry Road, then northerly along Quarry Road to its intersection with Einberger Road, then northerly along Einberger Road to its intersection with Moschel Road, then westerly along Moschel Road to its intersection with Collins Marsh Road, then northerly along Collins Marsh Road to its intersection with Hilltop Road.

*Exterior Zone:*

*Mississippi River Subzone:* That portion of the State encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County, then extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

*Brown County Subzone:* The area encompassed by a border commencing at the intersection of the Fox River with Green Bay in Brown County, then running southerly along the Fox River to its intersection with Highway 29, then

northwesterly along Highway 29 to its intersection with the Brown County line, then counterclockwise along the Brown County line to its intersection with Green Bay, then directly east to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to its intersection with the Fox River.

*Remainder of Exterior Zone:* That portion of the State not included in the Horicon or Collins Zones; or the Mississippi River or Brown County Subzones.

*Early-Season Goose Subzone:* That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

*Pacific Flyway*

*California*

*Southern Zone:* In that portion of southern California (but excluding the Colorado River Zone) lying south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 166 near the City of Santa Maria; east on Highway 166 to the junction of Highway 99; south on Highway 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the

Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California-Nevada State line.

*Idaho*

*Southwestern Area:* That portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except the 10 Northern Counties Area and except Custer and Lemhi Counties).

*Southeastern Area:* That portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border, including all of Custer and Lemhi Counties. Oregon

*Malheur County Zone:* All of Malheur County.

*Klamath, Lake, and Harney Counties Zone:* All of Klamath, Lake, and Harney Counties.

[FR Doc. 92-20169 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-55-F



# Executive Order Federal Register

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Friday  
August 21, 1992

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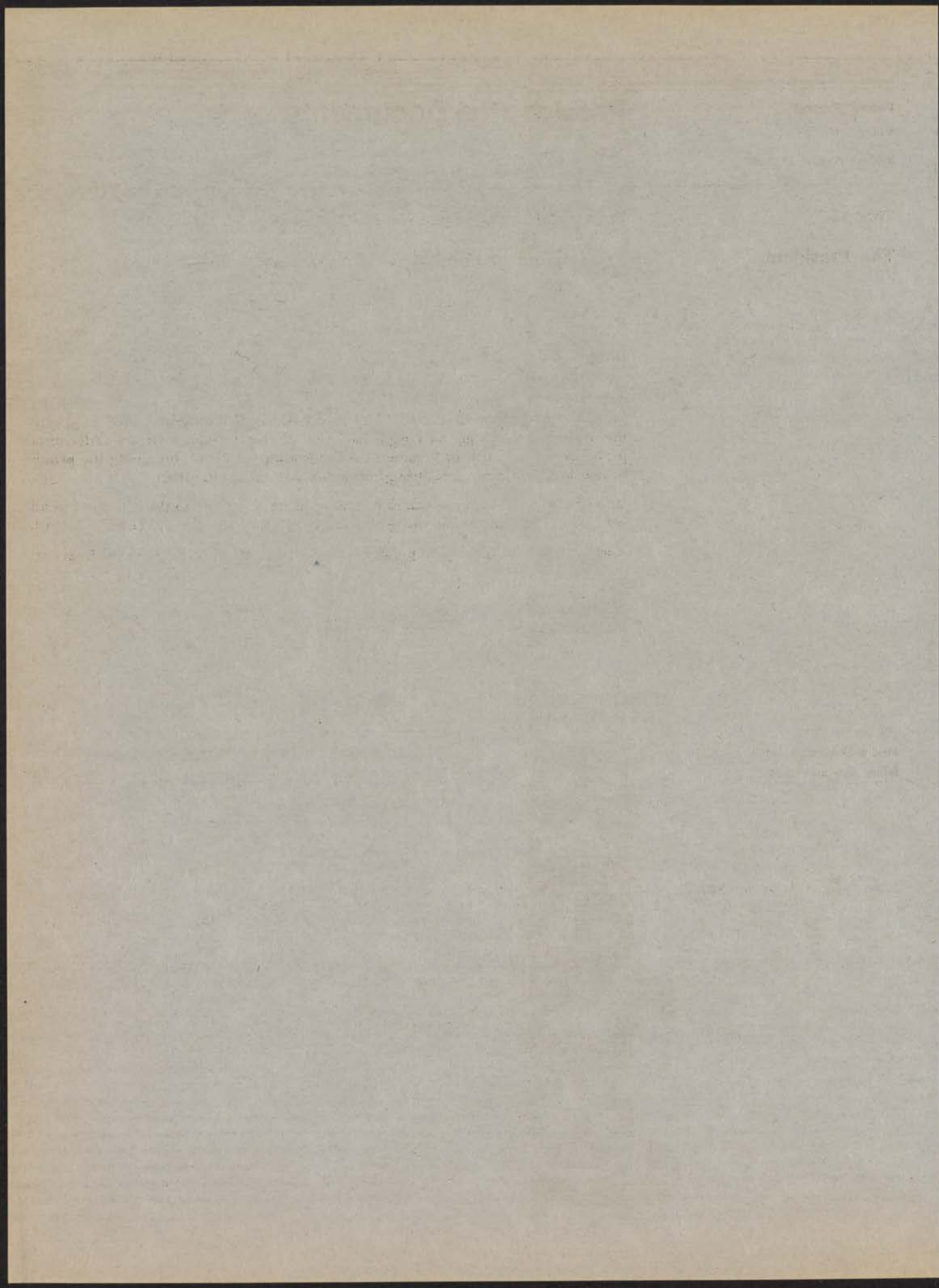
## Part VIII

### The President

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Presidential Determination No. 92-41—  
Resumption of Foreign Air Cargo Service  
to Lebanon







Federal Register

Vol. 57, No. 163

Friday, August 21, 1992

## Presidential Documents

Title 3—

Presidential Determination No. 92-41 of August 17, 1992

The President

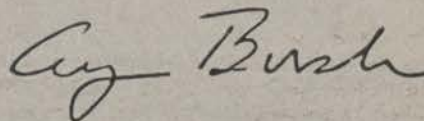
Resumption of Foreign Air Cargo Service to Lebanon

### Memorandum for the Secretary of Transportation

By virtue of the authority vested in me by section 1114(a) of the Federal Aviation Act of 1958, as amended ("the Act") (49 U.S.C. 1514), I hereby determine that the prohibition of all transportation services to Lebanon by Presidential Determination 85-14 of July 1, 1985, is hereby amended to permit the outward carriage of cargo to Lebanon by foreign carriers. All other prohibitions set forth in Presidential Determination 85-14, including the prohibition on U.S. air carriers flying into Lebanon, remain in effect.

You are directed to bring this determination immediately to the attention of all air carriers within the meaning of section 101(3) of the Act (49 U.S.C. 1301(3)).

You are further directed to publish this determination in the **Federal Register**.



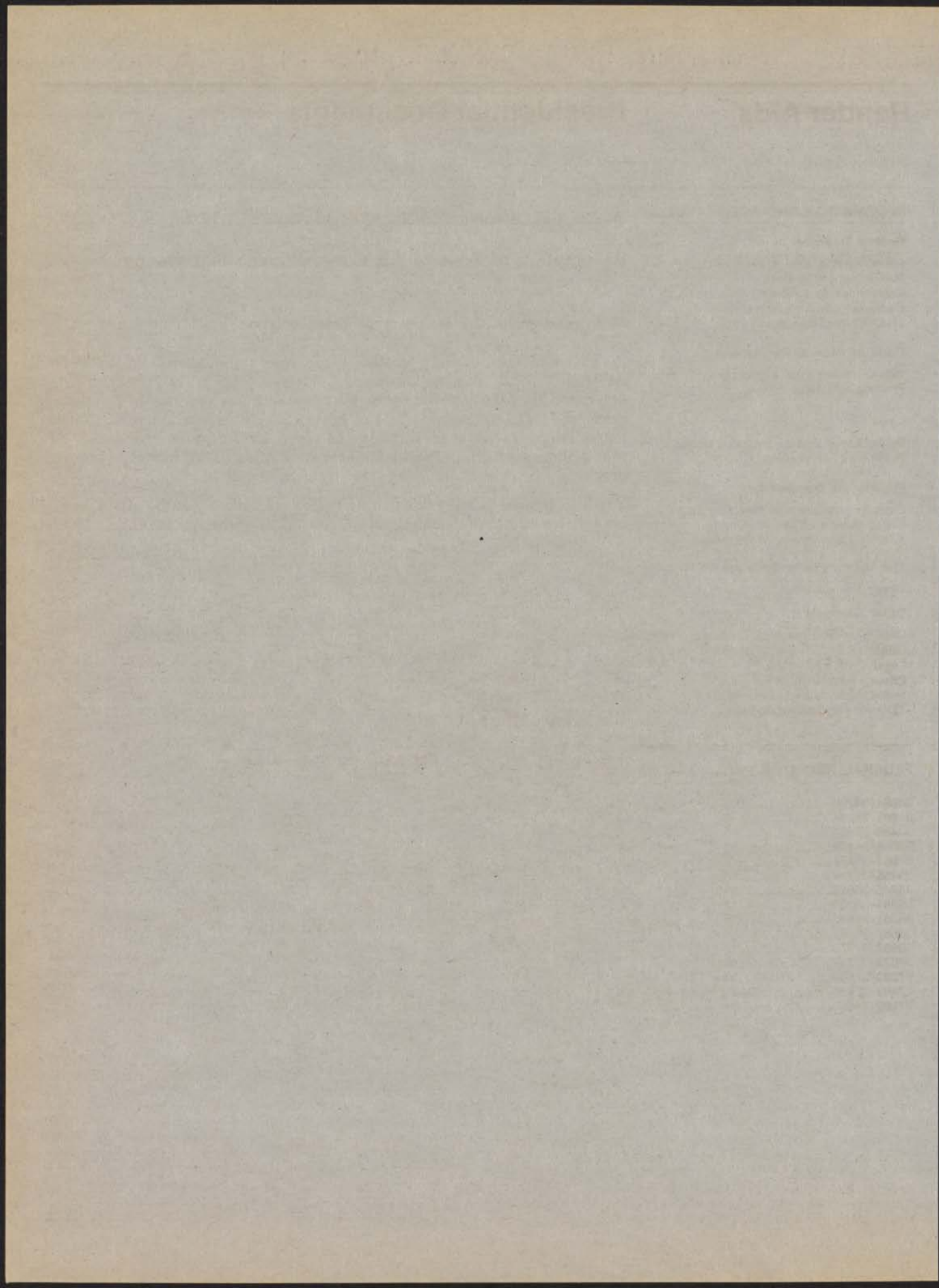
THE WHITE HOUSE,  
Washington, August 17, 1992.

[PR Doc. 92-20275

Filed 8-20-92; 10:38 am]

Billing code 3195-01-M







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**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 20, 1992



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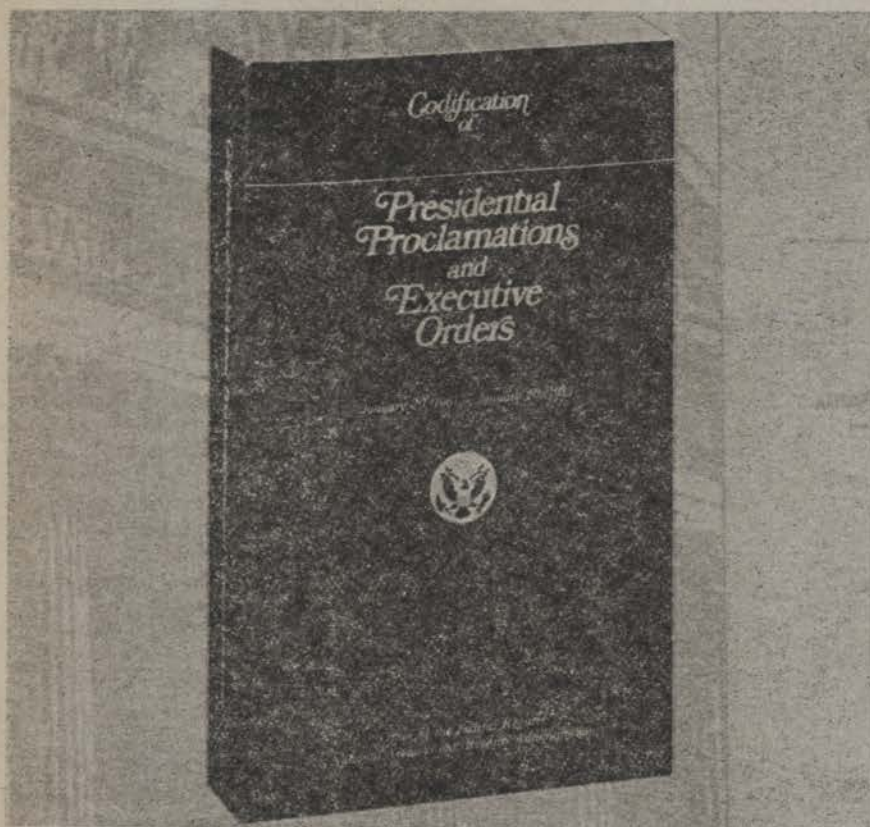
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